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The bishop's responsibility for his presbyterate in the context of sexual offences committed by priests*

Abstract

The aim of this paper is to answer the question: How should the bishop act towards his presbyterate so that its members would not commit sexual offences, particularly the most serious ones? The following issues are presented: the relationship between a bishop and his presbyterate, the bishop's responsibility for the admission of proper candidates to ordination, the assignment of offices and functions in the diocese, the bishop's obligation to watch over the discipline of the clergy, the bishop's responsibility for granting the faculty of hearing the confessions.

Keywords

canon law, bishop's responsibility, presbyterate, clergy, celibacy, sexual continence, sexual misconducts.

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1. The bishop and his presbyterate

The aim of this paper is to answer the question: How should the bishop act towards his presbyterate so that its members would not commit sexual offences, particularly the most serious ones (but not only those involving the abuse of minors), for which a priest or deacon is dismissed, particularly through disciplinary action, from the clerical state? The penalty of dismissal from the clerical state may be imposed for sexual offences listed in the new can. 1395 § 1–3,¹ for offences specified in can. 1398 § 1² and for the offence of solicitation referred to in can. 1385.

The bishop is responsible for his presbyterate. It is not wrong to say that the presbyterate – a collegiality of priests serving in the diocese under the power of the diocesan bishop, both incardinated and non-incardinated, including also regular priests³ – is the bishop's presbyterate, "his" presbyterate, not only the presbytery of the diocese.⁴ Obviously, this expression does not mean any "privatisation" of priests by the bishop; it is only aimed at emphasising a close relationship existing between the bishop and his presbyterate. Presbyters never act on their own or independently – they always act together with the bishop,

¹ These include: 1) living in concubinage, 2) continuing in some other external sin against the sixth commandment of the Decalogue which causes scandal, 3) committing another offence against the sixth commandment of the Decalogue, 4) inducing someone, by force, threats or abuse of his authority, to perform or submit to sexual acts. Unless otherwise indicated, all references to canons refer to the Code of Canon Law promulgated by John Paul II: *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus*, 25 Jan. 1983, "Acta Apostolicae Sedis" 75 (1983), pars 2, pp. 1–317.

² These include: 1) committing an offence against the sixth commandment of the Decalogue with a minor or with a person who habitually has an imperfect use of reason or with one to whom the law recognises equal protection; 2) grooming or inducing a minor or a person who habitually has an imperfect use of reason or one to whom the law recognises equal protection to expose himself or herself pornographically or to take part in pornographic exhibitions, whether real or simulated; 3) acquiring, retaining, exhibiting or distributing, in whatever manner and by whatever technology, pornographic images of minors or of persons who habitually have an imperfect use of reason.

³ See M. Sitarz, *Prezbiterium diecezji*, in: *Leksykon Prawa Kanonicznego*, ed. M. Sitarz, Lublin 2019, published by Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa KUL, col. 2238–2240.

⁴ See John Paul II, *Post-Synodal Apostolic Exhortation "Pastores Gregis" on the Bishop, Servant of the Gospel of Jesus Christ for the Hope of the World*, 16 Oct. 2003, Vatican 2003, published by Libreria Editrice Vaticana, no. 33 (The bishop surrounded by his presbyterate); title preceding no. 47 (The bishop with his presbyterate).

participating in his ministry of Christ. A presbyter preaches the Gospel as the bishop's co-operator and gathers the family of God "in the name of the bishop."⁵ Bishops act through presbyters, who partly take over their tasks and concerns.⁶ The community of the bishop and the presbyterate is not dictated only by functional and organisational requirements or the need for a better co-ordination of activities for the purpose of making them more effective. It results mainly from profound theological reasons, because "their [presbyters'] union of will and of intent with the bishop deepens their union with Christ."⁷ For ecclesiological and sacramental reasons, it is impossible to imagine presbyters, nor can they understand themselves without reference to their bishop.⁸ Thus, presbyters are necessary assistants and counsellors⁹ of the bishop – to such an extent that, as one of the Polish archbishops said, "a bishop without presbyters means nothing."¹⁰ "A presbyter without a bishop (incardination) remains actually in suspension contradicting his own identity, because he received the sacramental gift of the Holy Spirit through and in respect of the bishop."¹¹

This close theological bond, which does not exhaust itself in a simple relation of subordination between the superior and the subordinate, requires the bishop to be particularly responsible for his presbyters. This responsibility is based not only on bearing negative consequences of wrong actions or omissions,¹² but on assuming the obligation to take care of presbyters: "In exercising his ministry, the bishop relates to his priests not merely as a ruler towards his subjects,

⁵ Second Vatican Council, *Decree on the Ministry and Life of Priests "Presbyterorum ordinis"*, 7 Dec. 1965, no. 6.

⁶ Second Vatican Council, *Decree Concerning the Pastoral Office of Bishops in the Church "Christus Dominus"*, 28 Oct. 1965, no. 15. See also Congregation for Bishops, *Directory for the Pastoral Ministry of Bishops "Apostolorum successores"*, 22 Apr. 2004, no. 75 (further: ApSucc).

⁷ ApSucc, no. 76.

⁸ See G. Ghirlanda, *Il sacramento dell'ordine e la vita dei chierici (Cann. 1008–1054; 232–297)*, Roma 2019, published by Pontificia Università Gregoriana, p. 376.

⁹ *Decree Presbyterorum ordinis*, no. 7.

¹⁰ Words of Archbishop Grzegorz Ryś, Metropolitan Bishop of Łódź, *Archbishop Grzegorz Ryś: A Bishop Who Defies Categorisation*, 2 Nov. 2017, <https://www.rp.pl/kosciol/art2333601-arcybiskup-grzegorz-rys-biskup-wymykajacy-sie-schematom> (02.12.2021).

¹¹ Polish Bishop's Conference, *Droga formacji prezbiterów w Polsce [The formation process of presbyters in Poland]*. *Ratio institutionis sacerdotalis pro Polonia*, 11 Mar. 2021, no. 39.

¹² On that subject, see P. Majer, *Wykorzystywanie seksualne osób małoletnich. Ujęcie interdyscyplinarne. Część I*, ed. M. Cholewa, P. Studnicki, Kraków 2021, published by Scriptum, pp. 295–330.

but rather as a father and a friend. He should devote himself wholeheartedly to creating a climate of affection and trust such that his priests may respond with a convinced, pleasing and firm obedience.”¹³ The primary subject of the bishop’s responsibility is concern about the sanctity of his priests.¹⁴ The care and responsibility of the bishop for his presbyters is synthesised by can. 384 of the Code of Canon Law: “With special solicitude, a diocesan bishop is to attend to presbyters and listen to them as assistants and counsellors. He is to protect their rights and take care that they correctly fulfil the obligations proper to their state and that the means and institutions which they need to foster spiritual and intellectual life are available to them. He also is to take care that provision is made for their decent support and social assistance, according to the norm of law.” The bishop must always be concerned for the material and spiritual well-being of priests.¹⁵

It is worth noting that the bishop should care about providing his presbyters with means necessary for the development of spiritual and intellectual life, but also try to ensure that they fulfil obligations relevant to their state. He should, therefore, expressly care about his presbyters,¹⁶ but also discipline and supervise them so that they would faithfully fulfil the obligations of their state, which is also a sign of the bishop’s care and responsibility.

A special area of the bishop’s responsibility for his presbytery is ensuring that presbyters maintain priestly celibacy. The bishop should inspire all presbyters to live a profound spiritual life that will fill their hearts with the love of Christ. He should also create such external conditions for his presbyters that they could meet the assumed obligation, which means promoting the common life of priests to protect them from feeling lonely, but also warning or admonishing those who would find themselves in a risky situation.

¹³ ApSucc, pp. 85–86, no. 76. On theological fundamentals of the bishop’s responsibility for his presbyterate, see J. Ruch, *Wspólnota prezbiterium diecezjalnego w nauce Soboru Watykańskiego II*, “*Studia Theologica Varsaviensia*” 14 (1976), no. 1, pp. 121–124.

¹⁴ See Decree *Presbyterorum ordinis*, no. 7.

¹⁵ See Decree *Presbyterorum ordinis*, no. 7.

¹⁶ Apostolic Exhortation *Pastores gregis*, 47: “Each Diocesan Bishop has as one of his primary duties the spiritual care of his presbyterate: ‘The action of the priest who places his hands in the hands of the Bishop on the day of his priestly ordination, as he professes to him *filial respect and obedience*, can at first sight seem a one-way gesture. In reality, the gesture commits them both: priest and Bishop. The young presbyter chooses to entrust himself to the Bishop and the Bishop for his part obliges himself to look after those hands.’”

2. The bishop's responsibility for the admission of proper candidates to ordination

The bishop's responsibility for his presbytery begins even before individual priests become members of this presbytery. It is often believed that the concern for the formation of candidates for priesthood is only the responsibility of the rector and educators of the seminary; however, it must be reminded that this is the bishop's personal responsibility. After the appointment of the rector and other formators, in accordance with can. 239 § 1 and 2 – whom the bishop should select “with great care”¹⁷ – the bishop is not released from responsibility and care for the formation of candidates for priesthood. This responsibility cannot be ceded fully onto the rector and other educators – from the candidate admission stage, the bishop is personally responsible for him.

Can. 241 § 1 provides that “a diocesan bishop is to admit to a major seminary only those who are judged qualified to dedicate themselves permanently to the sacred ministries; he is to consider their human, moral, spiritual, and intellectual qualities, their physical and psychic health, and their correct intention”. We must strongly state that candidates are admitted to the seminary formally by the bishop, not by the rector. And it is the bishop who ultimately evaluates whether the candidate has qualities mentioned in this and other provisions.¹⁸ Among various qualities required from the candidate, as well as circumstances excluding admission to the seminary, it is indicated that those who “were involved in any manner in crimes or situations of abuses” towards minors or vulnerable persons must not be admitted.¹⁹

¹⁷ Apostolic Exhortation *Pastores gregis*, no. 48.

¹⁸ Congregation for the Clergy, *The Gift of Priestly Vocation. Ratio fundamentalis institutionis sacerdotalis*, 8 Dec. 2016, no. 189: “The bishop is responsible for admissions to the Seminary; with the help of the community of formators, he is to evaluate the human, moral, spiritual and intellectual qualities of the candidates, their physical and psychological health, and their right intentions.”

¹⁹ *Ibid.*, no. 202. This general statement does not seem to exclude the admission of a sexually abused person, because we can read in the same point that “formators must ensure that those who have had painful experience in this area receive special and suitable accompaniment”. See also Polish Bishop's Conference, *Droga formacji prezbiterów w Polsce*, no. 82 and 224, where it is indicated that in the case of discovering serious problems resulting from an experience of sexual abuse (even if the candidate was only a witness to such acts), the suitability of the candidate for ordination must be verified again. As far as perpetrators of sexual offences are concerned, the document of the Conference of the Episcopate of Poland clearly indicates that it must be verified for admission to the seminary whether the candidate has not been

During formation in the seminary, the bishop should not only visit the seminary regularly,²⁰ but he should meet clerics individually.²¹ “A genuine personal knowledge of the candidates for the priesthood in the particular Church is indispensable for the bishop. On the basis of these direct contacts, he will ensure that the seminaries form mature and balanced personalities, and men capable of establishing sound human and pastoral relationships, knowledgeable in theology, solid in the spiritual life, and in love with the Church.”²²

The bishop should take care – also by approving the formation plan in the seminary – that preparation for life in abstinence and celibacy is carried out properly as a part of the cleric formation process, in accordance with the guidelines of the Church, so that the candidate for ordination could choose life in celibacy in a mature, free and responsible way, perceiving this requirement not as a necessary condition for the acceptance of priesthood, but as a gift from God.²³

entered into the register of perpetrators of sexual offences and if it turns out that he was the perpetrator of an offence of sexual abuse of minors, he must not be admitted under any circumstances. See no. 222–223. See also Polish Bishop’s Conference, *Wytyczne dotyczące etapu wstępnego wewnętrznego postępowania kościelnego w przypadku oskarżeń duchownych o czyny przeciwko szóstemu przykazaniu z osobą małoletnią* [Guidelines regarding the preliminary stage of internal ecclesiastical procedure in the case of accusation of priests of acts against the sixth commandment with a minor]. Annex 3: *Zasady formacji i profilaktyki* [The rules of formation and prevention], 8 Oct. 2014 (as amended), “Akta Konferencji Episkopatu Polski” 22 (2019), no. 31, pp. 269–270.

²⁰ Can. 259 § 2 – “The diocesan bishop or, for an interdiocesan seminary, the bishops involved are to visit the seminary frequently, to watch over the formation of their own students as well as the philosophical and theological instruction taught in the seminary, and to keep themselves informed about the vocation, character, piety, and progress of the students, especially with a view to the conferral of sacred ordination.” The bishop should treat visits to the seminary as one of the particularly important moments of his mission as a bishop. See ApSucc, no. 88.

²¹ “During these visits, the bishop should seek the opportunity for a direct and informal encounter with his students so that he comes to know them personally, developing his familiarity and friendship with each of them so as to be able to evaluate their interests, their aptitudes, their human and intellectual gifts as well as those aspects of their personalities that require greater attention in formation.” ApSucc, no. 88.

²² Apostolic Exhortation *Pastores gregis*, no. 48.

²³ See Sacra Congregazione per l’Educazione Cattolica, *Orientamenti educativi per la formazione al celibato sacerdotale*, 11 Apr. 1974, Enchiridion Vaticanum, vol. 5, Bologna 1990, published by Edizioni Dehoniane Bologna, pp. 188–256; Congregation for the Clergy, *The Gift of Priestly Vocation...*, no. 95 and 110; Polish Bishop’s Conference, *Droga formacji prezbiterów w Polsce*, no. 46, 81–82, 307, 315, 354.

The bishop is not only the minister of the sacrament of ordination²⁴ – he also makes the ultimate decision on the admission of the candidate to ordination. According to can. 1025 § 1, before a candidate receives presbyteral or diaconal orders, it is the task of his own bishop to judge whether the candidate has the required qualities. “It is the task of the bishop or the competent superior not only to examine the suitability and the vocation of the candidate but also to recognize it.”²⁵ This is because every presbyter “receives his vocation from our Lord through the Church.”²⁶ Naturally, the bishop makes a decision on admission to ordination “upon hearing formators,”²⁷ with whom he should keep in regular touch throughout the period of formation of the candidate²⁸ and whose opinion he must consider seriously and from which he cannot depart without justified reasons,²⁹ however, it is his task to make the final judgement and issue the formal decree of admission to ordination.³⁰

It is obvious that a candidate possessing serious deficiencies in the field of human sexuality manifesting itself in the lack of sexual integrity, the inability of self-control or disturbances of sexual preferences, including also paedophilic or homosexual tendencies cannot be admitted to the seminary, let alone to ordination.³¹ The formation program of the seminary should include the issue

²⁴ See cann. 1012 and 1015 § 1 and 2.

²⁵ Apostolic Exhortation *Pastores dabo vobis*, no. 35.

²⁶ Apostolic Exhortation *Pastores dabo vobis*, no. 35.

²⁷ Congregation for the Clergy, *The Gift of Priestly Vocation...*, no. 73.

²⁸ ApSucc, no. 89: “As the students’ formation proceeds, the bishop should obtain from the superiors of the seminary clear information regarding their situation and their progress. With prudent forethought, and via scrutinies, he should establish that each of the candidates is suitable for holy orders and fully committed to living the demands of the Catholic priesthood.” The diocesan bishop is also responsible for approving the formation plan and the rules of the seminary. See *ibid.*, no. 90.

²⁹ See Congregation for Divine Worship and the Discipline of the Sacraments, *Circular Letter “Entre las más delicadas” to the Most Reverend Diocesan bishops and other Ordinaries with Canonical Faculties to Admit to Sacred Orders concerning Scrutinies Regarding the Suitability of Candidates for Orders*, 10 Nov. 1997, *Enchiridion Vaticanum*, vol. 16, Bologna 1999, published by Edizioni Dehoniane Bologna, pp. 1147–1148, no. 3.

³⁰ See *ibid.*, p. 1160, Annex III, pt 10. See also Congregation for the Clergy, *The Gift of Priestly Vocation...*, no. 210; Polish Bishop’s Conference, *Droga formacji prezbiterów w Polsce*, no. 346.

³¹ See Congregation for the Clergy, *The Gift of Priestly Vocation...*, no. 191, 199–200.

of sexual abuse of minors and vulnerable persons.³² It is also necessary to consult experts in psychology or other fields in accordance with the law.³³

As experience shows, many problems caused by some clerics – including also criminal acts related to the injury of victims of sexual abuse, the outrage and departure of believers from faith – could have been avoided if the defects of the personality of the candidate had been noticed in time and the candidate had been expelled from the seminary without being admitted to ordination.³⁴

The admission of a person to the seminary and ordination, who has serious problems with sexuality which would create the risk that, in the future, the consecrated priest could commit offences of that nature, would not only constitute a serious burden on the bishop's conscience, but would also expose him to criminal liability. According to the amended can. 1379 § 4, the deliberate – i.e., involving the awareness of the existence of the candidate's problem – administration of a sacrament to a person who must not receive it, is a prohibited act.³⁵ This canon seems to encompass also the situation of giving orders to a person who is prohibited from receiving this sacrament.³⁶

The deliberate admission to ordination of a person who is known to be affected by serious dysfunctions regarding sexuality, not only creates the risk of an offence and injury being committed on minors or vulnerable persons, but it also holds the bishop responsible for offences that such a person may commit and injuries that he may inflict. In this context, Paul VI's words to bishops from his encyclical on priestly celibate issued in 1967, are suggestive: "It was you who called them and destined them to be priests; it was you who placed your hands on their heads; with you they are one in sharing the honour of the priesthood

³² See *ibid.* no. 202; Polish Bishop's Conference, *Droga formacji prezbiterów w Polsce*, no. 117; See also Polish Bishop's Conference, *Wytuczne...*, Annex 3: *Zasady formacji i profilaktyki*, p. 270, Art. 3.

³³ See Congregation for the Clergy, *The Gift of Priestly Vocation...*, no. 192–196; Polish Bishop's Conference, *Droga formacji prezbiterów w Polsce*, no. 114, 209, 217–218.

³⁴ See G. Ghirlanda, *Doveri e diritti implicati nei casi di abusi sessuali perpetrati da chierici*, "Periodica de re canonica" 91 (2002), p. 41.

³⁵ Can. 1379 § 4 – "A person who deliberately administers a sacrament to those who are prohibited from receiving it is to be punished with suspension, to which other penalties mentioned in can. 1336 §§ 2–4 may be added."

³⁶ Even though it is not an impediment to receive orders that is clearly referred to in cann. 1041–1042, but the law provides for the prohibition of admission to ordination elsewhere. See P. Milite, *Utrum "pedofilia" irregularitas "ex delicto" est? Et, quatenus affirmative, indolem poenae habet an non?*, "Apollinaris" 76 (2003), N° 1–2, pp. 583–585.

by virtue of the Sacrament of Orders; it is you whom they make present in the community of the faithful..." A bishop who would commit a negligence must not refrain from moral, canonical and civil responsibility.³⁷

3. Assignment of offices and functions

In the exercise of pastoral power on behalf of Christ, "a diocesan bishop in the diocese entrusted to him has all ordinary, proper, and immediate power which is required for the exercise of his pastoral function" (can. 381 § 1). This refers also to the assignment of offices and functions in the diocese. Can. 157 provides: "Unless the law explicitly establishes otherwise, it is for the diocesan bishop to provide for ecclesiastical offices in his own particular church by free conferral." The term "free conferral" (*collatio libera*) means that the bishop himself is the person who independently appoints a candidate and assigns an office to him,³⁸ but it does not mean that the bishop may arbitrarily confer offices to candidates appointed at his sole unrestricted discretion.³⁹ Discretion in the exercise of power in the Church is always limited by supreme rules of law – e.g., the rule concluding the Code of Canon Law, according to which the entire canon law is aimed at the salvation of souls⁴⁰ – and by the nature of mission of each bishop, who is appointed as pastor in order to "continue throughout the ages the work of Christ, the eternal pastor" by preaching the word, exercising sacraments and

³⁷ On the responsibility of bishops in the context of priests' sexual offences, see, inter alia: M. Cozzolino, *Profili di responsabilità del vescovo nei confronti di minori vittime di abusi sessuali imputati a sacerdoti*, in: *Sovranità della Chiesa e giurisdizione dello Stato*, G. Dalla Torre – P. Lillo, ed., Torino 2008, published by Giappichelli Editore, pp. 305–359; L. Eusebi, *Responsabilità morale e giuridica del governo ecclesiale. Il ruolo dei Vescovi in rapporto ai fatti illeciti dei chierici nel diritto canonico e nel diritto italiano*, "Apollinaris" 83 (2010); no. 1, pp. 223–245; M. Carni, *La responsabilità civile della diocesi per i delitti commessi dai presbiteri. Profili canonistici e di diritto ecclesiastico*, Torino 2019, published by Giappichelli Editore.

³⁸ Dependent provision (the canonical assignment of an office) takes place when the bishop himself designates the person supposed to hold the office and confers this office to him. If another entity appoints the person according to its right of choice (can. 164–179) or presentation (can. 158–163) – and the bishop only confers the office formally, we call it dependent provision. See M. Żurowski, *Problem władzy i powierzania urzędów w Kościele katolickim*, Kraków 1984, published by WAM, pp. 203–205.

³⁹ ApSucc, no. 78: "In assigning offices, the bishop should act with the greatest discretion, so as to avoid even the slightest suspicion of arbitrariness, favouritism or undue pressure."

⁴⁰ See can. 1752.

governing the Church through decisions being made.⁴¹ The bishop's autonomy in the assignment of offices and functions is also limited by the provisions of law specifying the nature of each office and setting the requirements to be met by candidates that the bishop also has to consider before conferring the office in question. Even if there were several candidates for a function, each of which would formally meet the requirements set by the law, the bishop's obligation is to choose the best one in concrete circumstances.⁴²

The assignment of ecclesiastical offices is generally regulated in can. 149 § 1: "To be promoted to an ecclesiastical office, a person must be in the communion of the Church as well as suitable, that is, endowed with those qualities which are required for that office by universal or particular law or by the law of the foundation." Thus, the candidate's suitability (*idoneitas*) is determined by the provisions of law. However, it is a general category⁴³ and we cannot expect that required qualities are specified in a precise manner that leaves no margin of decision. For example, with regard to conferring the office of pastor, can. 521 § 2 provides: "Moreover [apart from presbyteral orders], he [the candidate] is to be outstanding in sound doctrine and integrity of morals and endowed with zeal for souls and other virtues; he is also to possess those qualities which are required by universal or particular law to care for the parish in question." It is the bishop's task to judge whether the candidate has required qualities – anyway, not all of them are mentioned explicitly and they do not constitute a closed catalogue.⁴⁴ "For the office of pastor to be conferred on someone, his suitability must be clearly evident by some means determined by the diocesan bishop, even by means of an examination" (can. 521 § 3) and a bishop "is to entrust a vacant parish to the one whom he considers suited to fulfil its parochial care, after weighing all the circumstances and without any favouritism. To make a judgment about suitability, he is to hear the vicar forane and conduct appropriate investigations, having heard certain presbyters and lay members of the Christian faithful, if it is warranted" (can. 524). "In forming a judgment on the suitability of a priest for the administration of any parish the bishop should take into

⁴¹ Decree *Christus Dominus*, no. 2.

⁴² This was explicitly required by can. 153 § 2 of the Code of Canon Law of 1917.

⁴³ See A. Viana, "*Officium*" según el derecho canónico, Pamplona 2020, published by EUNSA, pp. 260–261.

⁴⁴ ApSucc, no. 213, refers to communication skills and the organisational ability of management. It is necessary to take into account the specific nature of the given community and concrete problems that must be addressed in the parish.

consideration not only his knowledge of doctrine but also his piety, apostolic zeal and other gifts and qualities which are necessary for the proper exercise of the care of souls.”⁴⁵ Also this fragment of the Decree Concerning the Pastoral Office of Bishops in the Church, using vague and indistinct terms, indicates that it is impossible to create a closed list of precise requirements and qualifications that would be clearly defined from a normative perspective, but it is necessary to refer to a non-legal axiological system – dogmatic and moral rules preached by the Catholic Church and valid in its community.⁴⁶ Therefore, the bishop will determine the candidate's suitability taking in consideration a broad scope of intellectual, moral and practical requirements.⁴⁷ Although he makes the ultimate decision on the appointment of the pastor, he should consider his choice in the context of specific circumstances of place and time without being influenced by subjective personal aspects or protection (this is what the clause “without any favouritism” means) and consult his decision with others.

From among various criteria of choice of a candidate for a clerical office, the bishop should take into account potential restrictions resulting from sexual offences, even if such requirement, or rather excluding fact, is not explicitly stated in the law.⁴⁸ It is obvious that a priest burdened with a psychosexual disturbance (or any other kind of mental, personality or characterological dysfunction) or serious moral disorder in this respect must not be entrusted with offices or functions related particularly to pastoral work with children or young people. This prohibition does not apply only to those priests against whom the remedies referred to in can. 1722 were formally applied or those who committed offences, were tried, their guilt was proved and the sentence or penal decree contained the formal prohibition to exercise pastoral ministry towards minors. It applies to everyone who, according to the ordinary's prudent judgement, poses

⁴⁵ Decree *Christus Dominus*, no. 31.

⁴⁶ See P. Kroczyk, *Funkcje klauzul generalnych na przykładzie kodeksu prawa kanonicznego z 1983 roku*, “*Annales Canonici*” 12 (2016), p. 80.

⁴⁷ Some make a distinction between “canonical” suitability and “moral” suitability. See A. Viana, *Significato dell' idoneità per l' ufficio ecclesiastico secondo il diritto canonico*, “*Folia Theologica et Canonica*” 7 (2018), pp. 252–254. It seems, however, that both specified requirements (e.g., age, education), moral requirements and other indefinite requirements (e.g., religiousness, eagerness), though more difficult to verify, make up the canonical ability.

⁴⁸ The Code of Canon Law does not set any specific or clear requirements regarding the assignment of some offices. For example, the only requirement for appointment to the office of a parish vicar is presbyteral ordination (see can. 546–547).

a physical or moral threat, whether towards specific persons, or towards the entire community, by creating a potential risk of outrage. Such a person does not meet the criterion of suitability for holding a pastoral office or function.

Moreover, the bishop must not appoint a priest who may formally meet the criteria of age, education, experience, etc., but is morally disgraced because of having committed a paedophilic offence in the past. Even if he has already been held responsible on the forum of secular law and canon law and the penalty to which he was once sentenced has become expunged from the perspective of state law and the risk of committing the same kind of offence would be excluded, the bishop has to consider also the situation of moral burden and the loss of reputation by the perpetrator of the offence, which may result in his rejection by the community of believers. After all, one of the reasons for the dismissal of a parson referred to in can. 1741, 3° is the “loss of a good reputation among upright and responsible parishioners or an aversion to the pastor which it appears will not cease in a brief time”. If the given circumstance may be a potential reason for dismissal, the same fact will exclude the candidate *a priori* from the assignment of the office for obvious reasons. Even the assignment of a function *ad experimentum* would be an act of imprudence and misuse of law.

This obviously involves serious difficulties in what we call a “distribution of presbytery”⁴⁹ in canonical language and “human resource management” in secular language. The bishop often has to face considerable difficulties when he wants to entrust a task to a priest who committed an offence of sexual abuse of a minor, even if this perpetrator does not pose a threat, served his sentence and really converted to the path of right conduct. Irrespective of this, in the age of the Internet, he faces the constant risk of being reminded of the offence he committed in the past, which often results in the loss of trust among believers, public indignation (often deliberately stimulated in the media) and the outrage of believers.

The bishop should verify the suitability of a candidate not only during an appointment to clerical offices and assignment of other tasks. During the fulfilment of the office or function, the bishop should also evaluate the presbyter’s conduct and react appropriately to received notifications of potential irregularities. It may happen that the bishop wrongly verified the suitability of the candidate before appointing him to the office concerned or someone lost the capacity to hold

⁴⁹ See can. 294.

his office.⁵⁰ In such a situation, the bishop may – or even should – recall him from his office or function⁵¹ and, if possible, entrust him with another task or no longer entrust any task.

4. Attentiveness to the discipline of the clergy

Another aspect of the bishop's responsibility for his presbytery is the obligation to watch over the discipline of the clergy. This duty is specified generally towards all believers in can. 392⁵² and specifically towards priests in can. 384: "A diocesan bishop is to... take care that they [presbyters] correctly fulfil the obligations proper to their state".

Attentiveness to the proper fulfilment of obligations is not limited to the exercise of supervision. A diocesan bishop should attend to presbyters with special solicitude and take care that the means and institutions which they need to foster spiritual and intellectual life are available to them (can. 384). The means to be provided by the bishop refer primarily to his attitude towards presbyters: building relationships with them as their father, brother and friend in the atmosphere of love and trust to make the practice of obedience much easier, the fair treatment of presbyters, personal acquaintance with priests, showing respect to them (also in public), supporting community life, including societies of presbyters, caring for the presbyters' human needs (livelihood, accommodation), and giving attention to priests who are experiencing difficulties.⁵³ Among institutional means, it is necessary to mention the ongoing formation of the

⁵⁰ See G. Boni, *Il buon governo nella Chiesa. Inidoneità agli uffici e denuncia dei fedeli*, Modena 2019, published by Mucchi Editore, pp. 85–112; G. Boni, *Il diritto di denunciare la mancanza di idoneità dei titolari degli uffici ecclesiastici*, "Ius Canonicum" 59 (2019), pp. 9–49.

⁵¹ See, e.g., can. 1740 with regard to pastors and can. 805 with regard to religion teachers in schools.

⁵² Can. 392 – § 1. Since he must protect the unity of the universal Church, a bishop is bound to promote the common discipline of the whole Church and therefore to urge the observance of all ecclesiastical laws. § 2. He is to exercise vigilance so that abuses do not creep into ecclesiastical discipline, especially regarding the ministry of the word, the celebration of the sacraments and sacramentals, the worship of God and the veneration of the saints, and the administration of goods.

⁵³ See ApSucc, no. 75–82. See also G. Ghirlanda, *Doveri e diritti...*, pp. 41–44; E. Miragoli, *Celibato sacerdotale: responsabilità del vescovo e funzione del diritto particolare*, "Quaderni di Diritto Ecclesiale" 18 (2005), pp. 118–119.

clergy,⁵⁴ including also retreats and recollections for priests, as well as spiritual care exercised by the priests' spiritual father appointed by the bishop.

In this part, however, we will briefly present the issue of the bishop's attentiveness to the maintenance of discipline by priests. The *Apostolorum successores*⁵⁵ directory recommends that the bishop react to any scandalous behaviours of priests with charity, yet firmly and decisively, making use of remedies available to him under the penal canon law. Such remedies include warning 'a person who is in the proximate occasion of committing an offence or upon whom, after an investigation, there is a serious suspicion that an offence has been committed' (can. 1339 § 1) and rebuking a person whose behaviour "gives rise to scandal or serious disturbance of public order" (can. 1339 § 1). "If on one or more occasions warnings or corrections have been made to someone to no effect, or if it is not possible to expect them to have any effect, the Ordinary is to issue a penal precept in which he sets out exactly what is to be done or avoided" (can. 1339 § 4).

Another form of the bishop's reaction to scandalous behaviours recommended by the *Apostolorum successores* Directory is to dismiss the cleric from his office or to transfer him to another office.⁵⁶ Obviously, this second remedy can be applied only to a very limited extent if the cleric is seriously suspected of having committed an offence of sexual abuse of a minor or a vulnerable person, because a cleric affected by psychosexual anomaly, a personality disorder or a serious moral disorder may pose a threat to other persons also in a new place. Besides, there is a risk of submitting to the wrong impression that the very act of distancing the perpetrator from the place of the alleged crime or alleged victims constitutes a sufficient solution of the case and that no further steps need to be taken.⁵⁷ However, if the reprehensible conduct of a cleric does not refer to minors and does not involve any dysfunction that might limit his scope of self-control, transferring to a place where the occasions for misconduct do not arise may be useful.

If the use of remedies is not effective, the bishop should proceed to trial preceded, if necessary, by a preliminary inquiry.⁵⁸ It is worth remembering

⁵⁴ See can. 279, Apostolic Exhortation *Pastores dabo vobis*, no. 70–81; ApSucc, no. 83.

⁵⁵ See ApSucc, no. 81/e.

⁵⁶ See *ibid.*

⁵⁷ See Congregation for the Doctrine of the Faith, *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*, 16 Jul. 2020, no. 63.

⁵⁸ See can. 1717 § 1.

that one of the significant constituents of the recent reform of penal canon law made by Pope Francis pursuant to the Apostolic Constitution *Pascite gregem Dei* of 23 May 2021,⁵⁹ is summoning bishops to resort to penal sanctions more decisively and more frequently than has been the practice up until today/now. It is not only an option that the bishop may use, but his duty falling within the scope of the exercise of his pastoral task.

A sign and requirement of the bishop's responsibility in cases regarding offences committed by clerics, is to react appropriately to a notification of a suspected offence having been committed. In the case of offences, the judgement of which is reserved for the Congregation of the Doctrine of the Faith, the bishop should launch a preliminary inquiry and notify the Congregation about its result. The bishop is not competent to judge offences of this kind, and his freedom in the assessment of the reliability of the received notification of an offence and in making a decision on a preliminary inquiry, is very limited – he could abandon the investigation only in the case of the objective impossibility of the offence having been committed.⁶⁰

The bishop's responsibility for his presbytery in the context of sexual offences, manifests itself also in his attentiveness to the maintenance of priestly celibacy by priests.⁶¹ Apart from the aforementioned actions of spiritual and formative nature, the bishop cannot neglect disciplinary remedies. According to can. 277 § 3, the diocesan bishop is competent to establish more specific norms concerning the behaviour of priests towards persons whose company can endanger their obligation to observe continence or give rise to scandal among the faithful (§ 2). The provisions aimed at helping clerics in the maintenance of celibacy may refer directly to means serving this purpose, such as permanent formation, encouragement to live together and maintenance of the brotherhood

⁵⁹ L'Osservatore Romano. Edizione quotidiana 161 (2021), no. 122, 1 Jun. 2021, pp. 2–3.

⁶⁰ See P. Majer, *Przełożony kościelny a "notitia criminis" w sprawie zastrzeżonego dla Kongregacji Nauki Wiary przestępstwa przeciwko VI przykazaniu Dekalogu*, "Annales Canonici" 17 (2021), no. 2, pp. 69–81.

⁶¹ It must be noted however, that in the recent reform of Book VI of the Code of Canon Law the regulation of sexual offences against minors was transferred from the chapter "Delicts against Special Obligations" to the chapter "Delicts against Human Life and Freedom" – in this way, the legislator makes it clear that the wrongdoing in the offence of sexual abuse of a minor by a cleric does not consist only in the breach of the obligation of sexual abstinence and celibacy by the cleric, but primarily in the violation of the victim's dignity.

of presbyters, priests' associations,⁶² giving presbyters the effective possibility of using the vacation period available to them⁶³ (e.g., ensuring a replacement for this time).⁶⁴ Moreover, the bishop should also evaluate and enforce the fulfilment of this obligation by admonishing and warning a person who would find himself in a risky situation and imposing lawful consequences in the case of ascertaining abuses.⁶⁵

Under the Code of Canon Law of 1917, canon law – especially particular law – often contained detailed and restrictive provisions concerning clerics' relations towards women and adherence to the principles of prudence and carefulness in this respect (particularly the limitation of *solus cum sola* meetings).⁶⁶ Today such norms of behaviour actually do not occur. Nevertheless, examples of such provisions can be “codes” or “catalogues of good practices” adopted in some dioceses and religious institutes or societies of apostolic life and containing specific practical indications concerning the behaviour of clerics in relations to minors.⁶⁷ Their aim is to support children and young people against various forms of violence and to prevent sexual abuses and indecency.

5. The Faculty to hear confessions

Finally, because at least one of the sexual offences subject to the penalty of dismissal from the clerical state is related to the administration of the sacrament of penance,⁶⁸ it is worth referring to the granting of the faculty to hear confes-

⁶² See can. 278 § 2.

⁶³ See cann. 283 § 2, 533 § 2, 550 § 3.

⁶⁴ See G. Ghirlanda, *Il sacramento dell'ordine...*, pp. 426–427.

⁶⁵ See ApSucc, no. 82.

⁶⁶ See E. Miragoli, *Celibato sacerdotale...*, pp. 128–136.

⁶⁷ See, e.g., B. Nowakowski, “Zasady” Prowincji Misjonarzy Oblatów służące ochronie i zabezpieczeniu nieletnich w kontekście norm kanonicznego prawa karnego, in: *Reddite ergo quae sunt Caesaris Caesari et quae sunt Dei Deo. Księga jubileuszowa dedykowana Księdzu Profesorowi Józefowi Krukowskiemu z okazji 50-lecia pracy naukowej*, ed. M. Sitarz, P. Stanisław, H. Stawniak, Lublin 2014, published by Towarzystwo Naukowe KUL, pp. 524–529.

⁶⁸ Can. 1385 – “A priest who in confession, or on the occasion or under the pretext of confession, solicits a penitent to commit a sin against the sixth commandment of the Decalogue, is to be punished, according to the gravity of the offence, with suspension, prohibitions and deprivations; in the more serious cases he is to be dismissed from the clerical state.”

sions and to the possibility of depriving a priest of such faculty. According to can. 966 § 1, the valid absolution of sins requires that the minister have, in addition to the power of orders, the faculty of exercising it for the faithful to whom he imparts absolution. This requirement is dictated not only, as historically explained, by the need to have “power” over the penitent in order to be able to absolve his sins,⁶⁹ but also for the purpose of ensuring that only priests “capable” of fulfilling this delicate ministry in the confessional are allowed to do so⁷⁰ and of refusing this faculty to those priests who, in spite of having received holy orders, cannot fulfil this ministry, which requires the possession of adequate qualities and spiritual and human predispositions: knowledge, prudence, patience, tact, gentleness and the authenticity of priestly life.⁷¹ The sacrament of penance is a sacrament administered by a priest in which the competences of the minister are of utmost importance.⁷² Therefore, the verification of the candidate's ability to fulfil the ministry of a confessor referred to in can. 970, cannot be limited only to checking his state of knowledge, as the word “examination” might suggest.

If the given confessor abuses the received power of holy orders and exercises the sacrament of penance not only incompetently, but also in a manner which harms the penitents – he would rather hurt than heal them (this may happen with regard to the six commandment of the Decalogue, for example, due to the

⁶⁹ See M. Pastuszko, *Sakrament pokuty i pojednania*, Kielce 1999, published by Jedność, p. 188.

⁷⁰ Can. 970 – “The faculty to hear confessions is not to be granted except to presbyters who are found to be suitable through an examination or whose suitability is otherwise evident.”

⁷¹ John Paul II, Post-Synodal Apostolic Exhortation “*Reconciliatio et Paenitentia*” to the bishops, clergy and faithful on reconciliation and penance in the mission of the Church today, 2 Dec. 1984, Vatican 1984, Libreria Editrice Vaticana, no. 29: “For the effective performance of this ministry, the confessor must necessarily have human qualities of prudence, discretion, discernment and a firmness tempered by gentleness and kindness. He must likewise have a serious and careful preparation, not fragmentary but complete and harmonious, in the different branches of theology, pedagogy and psychology, in the methodology of dialogue and above all in a living and communicable knowledge of the word of God. But it is even more necessary that he should live an intense and genuine spiritual life. In order to lead others along the path of Christian perfection the minister of penance himself must first travel this path. More by actions than by long speeches he must give proof of real experience of lived prayer, the practice of the theological and moral virtues of the Gospel, faithful obedience to the will of God, love of the church and docility to her magisterium.”

⁷² F. Loza, *Comentario al can. 970*, in: *Comentario Exegético al Código de Derecho Canónico*, ed. A. Marzoa, J. Miras, R. Rodríguez-Ocaña, vol. III, Pamplona 1996, published by Eunsa, p. 787.

imprudent formulation of questions)⁷³ – and, moreover, commits an offence, the faculty to hear confessions should be revoked from him. Can. 974 § 1 provides that “the local ordinary and the competent superior are not to revoke the faculty to hear confessions habitually except for a grave cause”; however, this allows us *a sensu contrario* to conclude that if such an important reason occurs, the ordinary and, consequently, the diocesan bishop may, or even should, deprive the priest of the possibility of hearing confessions and revoke this faculty from him.⁷⁴

The specificity of a confession, subject to a sacramental secret, may involve some difficulties in the proper verification of potential complaints submitted by penitents against a confessor who, in their view, abuses his power in the exercise of the sacrament of penance. Upon receipt of such messages, the bishop should prudently intervene, being aware of the fact that the confessor has a limited possibility of defence. However, if complaints against the same priest are submitted repeatedly by reliable persons, and the confessor has serious deficiencies in other aspects of priestly life, we can reasonably presume that charges against him are justified and revoke the faculty from him. The same should be done by the bishop if the given priest does not meet the criteria required for fulfilling the ministry of a confessor for other reasons – e.g., because of being affected (even temporarily) by a mental disorder, dementia or a physical ailment (e.g., deafness).

The revocation of the faculty to hear confessions may also be lawfully imposed by a sentence or a decree as an expiatory canonical penalty,⁷⁵ particularly for offences committed in the exercise of the sacrament of penance.

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⁷³ See, e.g., V. Tirimanna, *The Sinful Talk of Sin*, the Polish text: *Grzeszne mówienie o grzechu. W poszukiwaniu źródeł utraty poczucia grzechu* in: *Sztuka spowiedania. Poradnik*, ed. J. Augustyn, Kraków 2012, published by WAM, pp. 193–194.

⁷⁴ The consequences of the revocation of the faculty differ as to the territorial scope of validity depending on which ordinary issued the decree revoking the faculty. See can. 974 § 2–4.

⁷⁵ See can. 1336 § 4, 2°.

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