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SOCIAL INSURANCE FOR CLERGYMEN UNDER CANON LAW

Abstract

The present paper raises the issue of social insurance for the clergy in the Catholic Church. The first part provides the historical background, norms of the 1917 Code of Canon Law and indications of the Second Vatican Council. The next part discusses the current decrees of canon law and solutions adopted in Poland. At present, the Church has abandoned the beneficial system. Systemic church solutions are based on state legislation. In their absence, decisions are made by the Bishops' Conference, as well as individual particular Churches. It refers both to social and health insurance.

Keywords: insurance, social insurance, health insurance, clergymen, canon law

UBEZPIECZENIA SPOŁECZNE DUCHOWNYCH W PRAWIE KANONICZNYM

Abstrakt

Opracowanie dotyczy ubezpieczeń społecznych duchownych w Kościele katolickim. W pierwszej części zarysowano historię zagadnienia, następnie normy Kodeksu z 1917 r. oraz wskazania Soboru Watykańskiego II. W dalszej części omówiono aktualne dyspozycje prawa kanonicznego oraz rozwiązania w polskiej sytuacji. Aktualnie Kościół porzucił system beneficyjny. Systemowe kościelne rozwiązania mogą istnieć w oparciu o ustawodawstwo państwowe. W razie ich braku decyzje podejmuje Konferencja Episkopatu, jak i poszczególne Kościoły partykularne. Chodzi tak o ubezpieczenia socjalne, jak i zdrowotne.

Słowa kluczowe: ubezpieczenia, ubezpieczenia społeczne, ubezpieczenia zdrowotne, duchowni, prawo kanoniczne

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INTRODUCTION

When Jesus called his disciples, they enthusiastically responded to the call and followed the Master of Nazareth, leaving all their former lives. Today, the choice of priestly vocation also means following Jesus, however, in the current context of life and ministry of the Catholic Church clergy, it is necessary to take into account some practical aspects of contemporary requirements, including applicable legislation. One of them is the issue of social insurance for the clergy. The Church's social teaching that developed in the twentieth century also applies to clergy and church workers. The present study will outline the development of the canonical legal thought on social insurance of the clergy. The research will cover the period from the promulgation of *Codex Iuris Canonici* in 1917 to modern times. What assumptions does the clerical insurance base on? What legal and practical solutions have been developed in the Catholic Church in this respect? Social insurance is understood here as insurance covering medical treatment in case of an illness or temporary health condition (health insurance), as well as insurance covering long incapacity to work (pension insurance).

The first part will provide the historical background of the issue, the next will present the assumptions resulting from the norms of the common law under the 1917 Code. Next, the author will refer to selected indications of the Second Vatican Council, which had an impact on the transformations in the scope of previously existing solutions. The next part of the study, will address the current legal indications regulating the issue of social insurance for the clergy. The last part will be devoted to the respective legal norms adopted in Poland.

1. HISTORICAL BACKGROUND

For many centuries, the Church relied on the beneficiary system, which secured financial support for church institutions, structures and the clergy, and at the same time provided social security. It can be assumed that in the ninth century the term benefice was already well-established in practice and in the church law (Rybczyk 1995, 262-265; Paschini 1949, 1305-1309; Mandelli 1949, 1310-1314). At that time, goods remaining at the disposal of the bishop and securing his maintenance (bishop's mensa) began to be separated from canonical goods (canonical prebendaries) (*Podręczna* 1913, 411). Allocated beneficiary goods secured the maintenance of individual canons. Among the various groups of emoluments, there were mainly bishops, Canon, parson and religious benefices. Very often, a benefice consisted of a real estate and the profit that it brought; although, various forms of contributions, wages and other sources income developed over time.

Due to a variety of practices, as well as diverse legal solutions associated with benefices, the Church conducted a reform of the canon law. *Gratian's decree* (about

1140) and subsequent changes to church law resulted in subjecting benefices to church legislation (Wójcik 1987, 15). One of the reform's significant goals was releasing the clergy from dependence on the owners of private churches. In the 12th and 13th centuries an idea of church benefice was developed as an office of emolument, constituting a legal person (Wójcik 1987, 15). The term *fabrica ecclesiae* was concurrently used. Both terms (*beneficium, fabrica ecclesiae*) were interpreted as designating a legal person or church property. Gradually, a distinction was made between beneficial assets, which served to maintain the beneficiary, and goods belonging to *fabrica ecclesiae*, which were to secure the construction and maintenance of churches and church buildings. However, until the 20th century, canon law did not always define the specific purpose of benefices assigned to local churches, i.e. it often provided both for the beneficiary's needs as well as for the goals of religious worship.

2. CODEX IURIS CANONICI 1917

In the *Codex Iuris Canonici* of 1917, the norms regulating church benefices are contained in Part V (*De beneficiis aliisque institutis ecclesiasticis non collegialibus*), of the Code's third book (Canons 1409-1494) (Codex 1917; Pasternak 1970; De Paolis 2001, 126- 133). The issue of benefices, which were connected with the majority of church offices, was particularly broadly addressed in chapter 25 (*De beneficiis ecclesiasticis*, Canons 1409-1488) of the discussed Code.

The code's norm stipulated that the clergy were entitled to ecclesiastical benefices and salaries (Codex 1917, Canon 118). The contemporary idea of the benefice was understood in the strict sense (Canon 1409) as a juridical being constituted perpetually consisting of a sacred office and the right to receive the revenue accruing from the endowment of the office (Codex 1917, Canon 1409). In the broader sense, benefices included also other revenues, such as: salaries, offerings of the faithful, stole fees (*iura stolae*), etc. (Codex 1917, Canon 1410). The legislature from 1917 distinguished various offices (Canon 1411). Further norms concerned the establishment of offices and benefices, union of beneficiaries, their transfer, division, as well as changes and abolition, and the imposition of new burdens on beneficiaries. A large part of the norms on benefices was associated with the issue of church offices, and therefore, with canons from book II of the Code of 1917 (*De Personis*).

After taking possession of the benefice, the beneficiary enjoyed certain rights but also assumed some obligations (Canon 1472). It should be noted that the beneficiary was not the owner of the beneficial property, but a user and administrator of goods (Bączkiewicz 1957, 397). When administering the property, the beneficiary was expected not to infringe on its material substance, preserving it as a whole. Naturally, it was possible to introduce some changes that resulted from rational economy. The beneficiary became the owner of benefice revenues,

though within certain limits, because he could use them only to provide for his own adequate maintenance, and any superfluous revenues were to be used for the benefit of the poor or for other good purposes (Codex 1917, Canon 1473). Adequate maintenance meant: food, clothing, housing, employment of servants, fair entertainment, medical treatment, etc. (Bączkiewicz 1957, 206; Stawniak 2013, 111).

The shortness of the present study prevents a full analysis of norms regulating the income of clergy, based on the Code norms on benefices, which also served social and health purposes. However, it should be added that social and political changes in many countries led in recent centuries to confiscation or nationalization of classically understood beneficiary goods. This was the result, among others, of the so-called depreciation acts, which implied taking over church goods by state authorities (Act 1950). The issue of benefices varied in different countries. Canonical norms often lost their validity, due to manifold historical and social conditionings prevailing in many countries, as well as in mission areas, where benefices ceased to exist in the last centuries.

Furthermore, it should be noted that, the so-called *iura stolae* provided a growing income as regards the overall revenue of the clergy (Biskupski 1966, 113-115). They included religious services rendered by the clergy, mainly administration of sacraments and sacramentals, during which the faithful made voluntary offerings. The right of the clergy to these offerings was often associated with performance of various pastoral duties. Although, it must be added that offerings related to religious services were and are a non-permanent source of income.

3. THE SECOND VATICAN COUNCIL

In the twentieth century, the beneficiary system, which was the core source of maintenance for the clergy, became inefficient and obsolete. Over time, it provoked legal and pastoral controversies (De Paolis 2001, 127-133). The guidelines of the Council decree *Presbyterorum ordinis* recommended that the beneficial system should be abandoned or reformed (Second Vatican Council 1965b, 20). The changed system was planned to be based on the institution of the diocese, which was to be managed by the bishop with the help of chosen priests, as well as secular experts in economics (Second Vatican Council 1965b, 21). Consequently, in countries where maintenance of the clergy depends entirely or largely on the offerings of the faithful, such offerings would be centrally collected and allocated for the needs of priests. Such a system harks back on the idea of Christian communities described in the Acts of the Apostles in Jerusalem, in which the members “had everything in common” (Acts 4,32) and their possessions “were distributed to each according to need” (Acts 4,35) (Dole 1984, 197-198).

Moreover, the previous legislation system was problematic due to the fact that it linked the concept of the church office with the benefice. The Council intended to highlight the concept and meaning of the ecclesiastical office as separated from the

benefice. Income from the benefice was meant to be only of secondary importance (Wójcik 1977; Wójcik 1981; De Paolis 2001, 134-137). Another source document of the Council related to the discussed matter was the *Christus Dominus* decree (Second Vatican Council 1965a, 16, 18).

Priests have the right to equitable remuneration, which is also evidenced by the evangelical statement: "for the laborer deserves his payment" (Luke 10,7, cf. 1Cor 9,14). Equitable remuneration is to secure the various needs of the clergy, including those concerning health and social security. The faithful should provide resources necessary to allow their shepherds lead honest and dignified lives. Bishops, on the other hand, are supposed to remind the faithful of this duty to provide fair remuneration for those who are in the service of the People of God or who carried out some tasks in the past (Second Vatican Council 1965b, 20). Such remuneration should enable the clergy to fulfill the duties of their own state, and also allow them to undertake works of mercy towards the needy.

It must also be added that, according to the Conciliar teaching, the remuneration associated with the ministry of the clergy should not be conceived of in terms of regular earning. Priests, internally free from disordered attachments, should adopt a properly distanced attitude towards temporal goods (Second Vatican Council 1965b, 17). Clergymen are to avoid any attitude of greed, on the contrary: they should practice voluntary poverty (Second Vatican Council 1965b, 17). The thought that priests should adopt a proper attitude towards earthly goods, as well as practice voluntarily poverty, was reiterated in post-Conciliar documents of the Church Magisterium (John Paul II 1992, 30; Kongregacja ds. Duchowieństwa 1994, 67). The above mentioned ideas of the Magisterium should also be referred to social security.

As regards social security, a more important text is an excerpt from the conciliar decree *Presbyterorum ordinis*: "Moreover, in nations where social security for the clergy is not yet aptly established, let the episcopal conferences see to it that in accord with ecclesiastical and civil laws-there may be either diocesan institutes, whether federated with one another or established for various dioceses together, or territorial associations, which under the vigilance of the hierarchy would make sufficient and suitable provision for a program of preventive medicine, and the necessary support of priests who suffer from sickness, invalid conditions or old age" (II Vatican Council 1965b, 21).

The Council's indication is that appropriate institutions responsible for social issues should be established at the level of episcopal conferences. Next, the document recommends priests actively engaged in pastoral care, to be guided by the spirit of solidarity and to support such institutions. By entrusting their future fate to ecclesiastical solutions, they will be able to serve the faithful even more deliberately and to practice poverty. The issue of health and social insurance was referred to in the post-conciliar document *Ecclesiae Sanctae* (Paulus VI 1966, I 8). Subsequently, the *Ecclesiae Imago* Directorate reminded about the need for social

and health security: of both the clergy who are currently serving the faithful and those who no longer perform priestly ministry because of illness, disability or old age (Sacra Congregatio pro Episcopis 1997, 137).

4. 1983 CODE OF CANON LAW

The Church has always been concerned about people, their welfare and needs. In the twentieth century, modern countries developed the concept of human rights. This idea also appears in church documents. In the Encyclical *Pacem in Terris*, Pope John XXIII indicated that those rights included health care and necessary services provided by the authorities for the benefit of individuals, and that people were also entitled to social security in the event of illness, incapacity for work, widowhood, old age, unemployment or an unconscionable deprivation of life resources (Joannes XXIII 1963, 11).

The above-quoted thought from the Church's Magisterium as well as the indications of the Second Vatican Council were elaborated in the *Code of Canon Law* of 1983. The first part of the current Canon 1274 of this Code is devoted to the maintenance of the clergy, but the second section deals with the issue of social insurance. "Where social provision for the benefit of clergy has not yet been suitably arranged, the conference of bishops is to take care that there is an institute which provides sufficiently for the social security of clerics" (*Code* 1983, Canon 1274 § 2).

The binding norm applies to the whole Church, whose clergy work and live in different countries, and hence in differentiated social security systems. Whereas, in countries where such systems do not exist or do not function properly, it is necessary to provide proper care for sick, elderly or disabled priests or those injured in various accidents. Thus, the Church recommends organizing insurance, although it refers to the action of ecclesiastical authorities as optional, depending on the needs, local conditions and norms of state law. Essentially, church social security should have an inter-diocesan character, unlike maintenance which is regulated in a particular diocese. The church legislator points to the Bishops' Conference as the entity, which should define and provide solutions or set up insurance institutions (Domaszk 2016, 177-180). A specific decision on the establishment of an appropriate institution belongs to individual bishops forming the Conference (Combalia 2004, 89). Potential activity of the Bishops' Conference complements or supplements the solutions that are often included in diocesan support programs for the clergy (Kennedy 2000, 1476). It should be added that even the existence of this type of common solutions between dioceses does not absolve the diocesan bishop from providing care for the health and social needs of the clergy (Combalia 2004, 90).

The issue of proper insurance also occurs in codex norms among the rights and duties of the clergy. In Canon 281, the first section deals with proper maintenance, while the second part addresses the question of due insurance:

“Provision must also be made so that they possess that social assistance which provides for their needs suitably if they suffer from illness, incapacity, or old age” (Code 1983, Canon 281 § 2). Particular Bishops’ Conferences can implement different solutions with respect to providing care for elderly and ailing priests (National Conference of Catholic Bishops 1991, 50-52). Retirement is usually associated with the attainment of certain age, e.g. 75; in the same way, the pastor or bishop who has reached this age is asked to submit his resignation from office (Code 1983, Canon 401 § 1, 538 § 3). Retired pastors should be provided for by a particular diocese or a higher diocesan structure within the framework of the Bishops’ Conference with respect to providing their maintenance and professional care, also with the help of non-church institutions (Lynch 2000, 369).

In turn, the content of the *Pastor Bonus* constitution obligates the Congregation for the Clergy, at the level of the whole Church, to monitor and supervise the question of social security of the clergy: “The Congregation carries out everything that pertains to the Holy See regarding the regulation of ecclesiastical goods, (...) and it further sees to it that serious thought is given to the support and social security of the clergy” (John Paul II 1988, 98).

Care for the clergy’s needs at the local level, also in the area of social security, rests with individual diocesan bishops (Congregation for Bishops 2004, 80). The church legislature directly defines in the Code of 1983 the duties of the diocesan bishop: “He also is to take care that provision is made for their decent support and social assistance, according to the norm of law” (Code 1983, Canon 384). If necessary, a common fund should be created in the particular Church to cover the various needs of the diocese (Congregation for Bishops 2004, 191). It is possible that, depending on local conditions, this type of diocesan fund will be allocated for health insurance or the support of elderly or ailing priests. Sometimes, establishment of separate pension funds allows particular Churches to provide protection of diocesan goods in case of legal conflicts. Among other things, this applies to those clerics who abandon the priesthood and demand provision of pension from this type of funds, e.g. in the USA (Morrissey 2000, 284-285).

Diocesan or inter-diocesan funds dedicated to healthcare or social security can be raised from a variety of incomes. Those may include contributions of the concerned clergy themselves, church foundations, but also other means and goods, such as: *iura stolae* offerings, e.g. from binated Holy Masses; property of expired non-autonomous foundations (Canon 1303 § 2); state subsidies; donations; church collections, etc. When individual contributions are inadequate, a diocesan bishop may consider the possibility of imposing a tax on specific entities.

Ensuring proper clerical insurance can also be linked to the transformation of previously existing beneficiary solutions. According to Canon 1272 of 1983CIC, the Bishops’ Conference, in consultation with the Holy See, defines the manner of managing the legacy of benefices. At the local level, it is possible to link former beneficial goods with insurance funds.

Insurance, when related to diocesan structures, may give rise to interpretation difficulties. For example, in a situation where other clergy, e.g. religiouses, perform some duties and tasks in the diocese, but not in relation to the church office (in the strict sense of the term). In such cases, one should remember to take into account relevant solutions regarding insurance stipulated in the agreement between the diocesan bishop and the superior of that clergyman who will undertake diocesan duties. Moreover, it is necessary to mention those clergymen who after years of working in other structures (e.g. university professors or missionaries) return to the diocese or are being transferred (change their incardination) from other particular church or from a religious institute: *ad experimentum*, and who should also be adequately insured (*Code* 1983, Canon 267-268, 693; Dole 1984, 204).

The situation of clergy who were subject of church punishment may also present a specific case: they cannot be deprived of means necessary to ensure their decent maintenance, according to Canon 1350 of the 1983Code. It seems that, while imposing punishment, it is necessary to take into account the continuity of social and health insurance. However, if a person is finally removed from the clergy, they must take care of their adequate insurance.

Social and health insurance may in part converge with the issue of adequate clerical support. The latter should take into account the nature of a person's ministry, quality of work, education, needs related to housing, social security, leisure or other conditions to maintain distributive justice, but also the simplicity and poverty of an evangelical life (Artner 2009, 13-17). Priests should be able to pay appropriate contributions or buy a health insurance policy, as well as pay contributions to pension funds from the funds received for their ministry. Adequate social security, as well as sufficient support, allow the clergy to maintain their inner freedom and release them from excessive concern for material matters and their future. Thus, they facilitate full involvement in performing ministerial duties (Zambon 2002, 266-268).

5. CLERICAL INSURANCE IN THE POLISH CONTEXT

Over the past centuries, clerical needs in Poland were secured by beneficiary arrangements. To put it in a nutshell, it can be stated that norms in this area (*Codex* 1917) functioned until the 1940s. The tragic events of World War II, radical changes in the borders of the Polish state after the end of the war, and the communist rule resulted in a completely new situation. State administration, among others pursuant to the Act of 1950 on the seizure of the rights of a dead hand, seized significant areas of agricultural real estate and other property rights, which practically eliminated the existence of church benefices.

In this situation, maintenance of the clergy and provision of their social needs over the next decades depended practically on the generosity of the faithful. The main source of maintenance for priests was the income from Sunday contributions, the offerings of mass scholarships and the *iura stolae* as well as other offerings.

It should be noted that the clergy in Poland, as the last social group, became embraced by the insurance system as late as in 1989 (Act 1989b; Stanisiz 2001; Bach 1994). Prior to that, only a small number of priests were insured.

Currently, the clergy in Poland are compulsorily insured on the basis of statutory solutions of the state social insurance system (Act 2008a; Act 2009; Act 2008b). The basis for insurance is usually a contract of employment, for example in the case of clergymen employed as catechists at school (religion teachers). In this case, the employer deducts social security and health insurance contributions from such a person's salary. Those who are not employed based on a contract are treated and insured according to the legal sense of the term "clergy" (Stanisiz 2011, 305-307). In the case of accumulating types of insurance, social insurance under the concluded employment contract prevails.

Under the Polish law, the term "clergy" is analogously treated in relation to social and health insurance. It refers to the clergy (sacrament of Holy Orders) and members of the male and female religious orders of the Catholic Church, but also of other religious organizations with a regulated legal situation. Alumni of Catholic seminaries are insured just as religiouses in initial formation, if they are over 25 (for social security); insurance of persons below 25 is voluntary.

Compulsory social insurance covers retirement, disability and accident insurance; sickness insurance is voluntary (requires an additional contribution). Diocesan clerics pay their own contributions, and the superiors of monastic houses (monasteries) regulate the fees of order the members. The premiums are calculated based on the minimum wage in a given year, which is specified in the Regulation of the Council of Ministers (Stanisiz 2011, 309-310).

In the case of contributions paid in respect of insurance for the "clergy", the interested parties pay part of the insurance contribution (pension, disability, accident), which amounts to 20% of the overall sum, and the remaining 80% is paid by the Church Fund (structure related to the state budget). This solution applies mainly to parish priests and consecrated persons who are not employed based on the contract of employment, for example those working in schools as teachers. A separate solution applies to members of contemplative orders and missionaries during their missionary work outside Poland, for whom the whole contribution is paid by the Church Fund.

Compulsory contribution ensures the future pension benefits at the minimum level. That is why, those interested can raise the amount of paid insurance contribution at their own request. It is also possible to apply other optional variants of insurance contracts, in addition to the mandatory system. Particular churches or religious institutes in Poland may include their clerics or religiouses in additional insurance options (e.g. life insurance) or health insurance (Act 1989a, Article 71 paragraph 2). An example of solutions addressed to diocesan priests are retirement residencies for priests. In connection with their functioning, the particular law very often stipulates establishing separate earmarked funds.

Regulations regarding compulsory health insurance which relate to the broadly understood “clergy”, are separate from those defining social purposes. Obligation of health insurance also refers to alumni of senior seminaries, postulants, novices, juniorists, male and female orders.

The ways of calculating contributions for health insurance may vary. Those who pay the personal income tax or the flat-rate tax for the “clergy’s” income, pay a contribution for this insurance individually. In the latter case, i.e. the flat-rate tax, the amount is calculated in relation to the applicable minimum wage (Stanisz 2011, 313). However, in the case of alumni, postulants, novices, juniorists and clergymen who are not taxpayers of the income tax, appropriate contributions are regulated by the Church Fund.

One more important issue related to the Polish context of insurance for the clergy is the document of the Conference of the Polish Episcopate, which in 2015, published an instruction on the management of temporal (ecclesiastical) property (Polish Bishops’ Conference 2015). The instruction reminded that in the matter of social security every clergyman is subject to Polish law. Consequently, the clergy are obliged to register for insurance, pay due contributions and fill in relevant documentation; when priests enter an employment relationship (sign an employment contract), these duties rest with the employer (Polish Bishops’ Conference 2015, 5.4).

The Polish Bishops’ Conference also recommends that in order to provide adequate social security for ill, disabled or retired clergy, a *subsidium charitativum* institution should be established in every diocese. Detailed regulations in this respect should be stipulated by the particular law of a given diocese (Polish Bishops’ Conference 2015, 3.8, 5.5).

The next indication of the Polish Bishops’ Conference is that the right to adequate and decent maintenance (*congrua et decora sustentatio*) of the clergy, which consists of remuneration and social security, should be essentially the same for all who are in the same condition (Polish Bishops’ Conference 2015, 5.6).

CONCLUSION

In the 20th century, the Catholic Church worked out two Codes of canon law. In the first of them, a number of norms regulated the beneficiary system, which ensured the maintenance of clergy and, indirectly, addressed the issue of social and health security. The Second Vatican Council called for a change in the beneficiary system, among others, pointing to the need for both adequate insurance, medical care, as well as the proper maintenance of presbyters affected by illness, disability or old age.

The current Code of 1983, marks a radical change, which consists in departing from the beneficiary system. Legal changes allowed, among others to adapt the issue of clerical insurance to the realities of the modern world, including the economic sphere. In particular, two regulations refer to adequate insurance for the clergy. These are canons 281 § 2 and 1274 § 2. System solutions can already

exist on the basis of state legislation. If there are no such solutions in a particular country or region, the Bishops' Conference should take appropriate action. Very often, the state structures or episcopal norms can be supplemented by insurance systems at the level of individual particular Churches. Those may include both social insurance, related to retirement, and disability, and health insurance.

Clergymen in Poland are covered by systemic and obligatory solutions based on the norms of state law. Separate acts regulate social insurance and health insurance. Specific regulations concern the clergy and religiouses, seminarians, consecrated persons who are generally recognized in the system of the Polish law the "clergy". The developed system allows for covering the necessary clerical insurance, as well as that of consecrated persons and seminarians.

Appropriate solutions stipulated by canon law, in connection with the state law regulations enable providing a solution with regard to specific social need of a given social group. They also allow the clergy to focus their attention on their most primary task, namely, the mission of proclaiming the Gospel.

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