

Liability in Tort of Legal Persons of Catholic Church

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ABSTRACT

This dissertation aims to tackle the problem of liability in tort of legal persons of the Catholic Church. In view of the Polish law, the issue in question is a relatively new concept. It has neither been thoroughly examined nor discussed comprehensively in any publication yet – nevertheless, it has been evolving since very recently by way of the media, court rulings and even a film.

The subject of liability of the Catholic Church's legal persons for torts committed by priests was pursued, *inter alia*, by Mirosław Nesterowicz, Ewa Łętowska, Adam Bodnar and Monika Płatek. However, so far, only M. Nesterowicz and E. Łętowska presented their views in a more specific manner. A decision to choose the subject of dissertation stemmed, to a large extent, from the bipolarity of opinions expressed by the Catholic Church and its legal representatives on the one hand, and the proponents of assigning liability to the structures of the Church for torts committed by persons subordinate thereto on the other hand.

Chapter One discusses precedent-setting litigation in which not only individuals who had directly caused damage, but also legal persons of the Catholic Church were engaged. This includes “the Koszalin Trial”, the legal action for payment of damages and compensation against the Our Lady of Perpetual Succour Parish in Toruń or proceedings ended on 2 October 2018, when the final and binding judgement was entered by the Court of Appeal in Poznań, in the case pertaining to the infringement of personal interests against the Society of Christ Fathers for Poles Living Abroad and the Religious House of the Society of Christ Fathers for Poles Living Abroad. Under this ruling, the claimant was awarded compensation of PLN 1 million including statutory interest and an annuity.

Another part of the dissertation is focused on the views articulated by E. Łętowska and M. Nesterowicz, who rely on the following legal basis for liability in tort of legal persons of the Catholic Church: Articles 415, 416, 429 and 430 of the Polish Civil Code. M. Nesterowicz's concept provided a basis for comparison in Chapter Two, which refers to the liability of the

U.S. Catholic Church for torts committed by priests, taking into consideration a possibility that such liability may be placed also on the Holy See. Furthermore, this chapter mentions the standpoint adopted by representatives of the Church in respect of “extending” liability and burdening not only direct perpetrators, but also the structures of the Church with such liability. Representatives of the Church maintained that provisions governing the functioning thereof, contained predominantly in the Code of Canon Law, do not provide any legal basis under which liability for a priest or monk is to be assumed by a unit – such as a parish, diocese or religious house – as part of which he performed activity.

Having considered the foregoing, Chapter Three attempts to define a place of the Canon Law in a national legal framework. Moreover, this chapter describes the sources of universally applicable legal regulations in Poland, the concept of the Canon Law and an attitude of the state to the internal law of the Catholic Church, the aspects of independence and autonomy of the Church, the dualism of legal frameworks. An analysis was conducted to examine the provisions of the Concordat between the Holy See and the Republic of Poland, the Act on Relationship Between State and Catholic Church and the Act on Guarantees of Freedom of Conscience and Religion, as well as selected canons.

Chapter Four provides a review of types of legal persons of the Catholic Church and the manner how they are set up. A statutory list of legal persons of the Catholic Church and their bodies was presented. The deliberations of this chapter led to a conclusion that such entities – legal persons of the Catholic Church – are engaged in many civil law relationships, have property and assets and their structures are in some cases very complex.

The grounds for liability for one’s own and another person’s acts, referred to in the introduction – that is to say, Articles 415, 416, 429 and 430 of the Polish Civil Code – are analysed in detail in Chapter Five, which gives plenty of reflections on conditions that must be satisfied in order that liability based on the aforesaid grounds be recognised. The examination covered, among other things, lawlessness, legal person’s fault, anonymous fault and a very relevant expression: “while performing an act entrusted”, as well as the elements of the relationship of subordination between a person performing an act and a person who engaged him or her to do so, limitations of claims for remedy of damage in tort and finally – pecuniary compensation for harm resulting from the infringement of personal interest. In addition to the Polish act, also the provisions of the Rome II Regulation were invoked in the context of law applicable to obligations arising from torts.

One of the fundamental features of the functioning of the Catholic Church or its legal persons is described in Chapter Six, entitled: “Hierarchical System of the Church”. It specifies

the rights and powers of the Bishop of Rome (who has the ultimate authority in the Church), presents particular churches, the smallest, yet the most relevant organisational unit of the Church – i.e. a parish, classification into clergymen, monks and lay persons, relationships established in the organisational units of the Catholic Church.

Chapter Seven is devoted entirely to the issue concerning the employment of priests and monks. Attention is given to the legal status of clergymen and the organisational units of the Catholic Church as the employer. Most importantly, the basis for liability for torts committed by clergymen, monks and lay religion teachers working at schools was outlined, with focus being given to a complex position of religion teachers who must report to school headteachers on the one hand and applicable church authorities on the other.

In view of the fact that both practitioners and representatives of science have uncovered irregularities that occur while entering into concordat marriages, Chapter Eight relates to damages liability for the breach of law while administering the sacrament of marriage. Views articulated by T. Smyczyński were relied on, as well as the consequences of failure to meet a five-day time limit for filing with a competent registry office a certificate prescribed by law and prerequisites and basis for damages liability in such a case were taken into account.

Careful consideration given in Chapter Nine is centred around the issue of the Holy See's liability in tort – which has been highlighted, *inter alia*, by M. Nesterowicz. The chapter provides examples of claims lodged directly with the Holy See, however, the key component of this part of dissertation is an answer to the question of whether the Polish law gives any grounds for the Holy See's liability in tort – although one must emphasise the fact that an attempt to assign liability to the Holy See and its delegates would be faced with a barrier of jurisdictional immunity of the state, as well as of diplomatic immunity.

Findings emerging from the research are revealed in Chapter Ten, which offers a description of circumstances under which liability in tort of legal persons of the Catholic Church may be recognised in practice – to this end, the provisions of Articles 415, 416, 429 and 430 of the Polish Civil Code are applicable. In view of complex regulations governing the activities performed by the Church (which are subject both to universally applicable law and the Canon Law) and having considered the vast number of its legal persons, hierarchical system, classification into monks and clergymen, the application of Articles 416, 430 and, to a lesser extent, of Article 429 of the Polish Civil Code was demonstrated in the context of more specific examples.

Chapter Eleven presents findings and conclusions emerging from this thesis. The exploration of the subject proved that those Authors who relied – from the very moment when

the issue was raised in legal discourse – on Articles 416, 429 and 430 of the Polish Civil Code, arguing that they formed a basis for liability of the Catholic Church understood in general terms were correct. An in-depth analysis of the problem pointed to a conclusion that even though, in principle, the Church is not (nor the Holy See or a parish) an employer of priests, when one considers its system that is based, to a large extent, on hierarchy, and takes into account interdependence and relations within its legal persons – in general, clergymen and monks act, while having an obligation to report to and being in the relationship of subordination to their superiors, which gives rise to a claim that consequences of liability for another person's acts may be borne after all prerequisites contemplated in the provisions of law have been fulfilled. One of such prerequisites includes a criterion for damage inflicted “while performing an act entrusted”. The foregoing conclusions are in line with a very present need for “extending” liability and assigning the same not only to direct perpetrators, but also to their superiors and structures. Landmark rulings will contribute to a heightened sense of the Church's liability for its representatives – and consequently, to more effective enforcement of rules and regulations.

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