

PROHIBITION OF BUSINESS OR TRADE BY THE CLERGY ACCORDING TO THE 1983 CODE OF CANON LAW. AN OUTLINE

Rev. Paweł Lewandowski, Ph.D.

Department of Public and Constitutional Church Law

Faculty of Law, Canon Law and Administration at the John Paul II Catholic University of Lublin

e-mail: pawel.lewandowski@kul.pl; <https://orcid.org/0000-0003-4543-4382>

Summary. The practice of business or trade by clerics and religious was strictly prohibited from the first centuries of the Church. Appropriate decisions were made at the Councils of Nicaea, Chalcedon, Lateran (IV) and Trent. In the 1917 Code of Canon Law, the legislator regulated the analysed matter in can. 142 and 2380. They were the source of the work of the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law. According to the legislator's disposition contained in can. 286 of the 1983 Code of Canon Law "Clerics are prohibited from conducting business or trade personally or through others, for their own advantage or that of others, except with the permission of the legitimate ecclesiastical authority." The breach of the above prohibition was punishable by a mandatory indeterminate *ferendae sententiae* penalty, which should be imposed on the cleric or religious, depending on the gravity of the delict.

Key words: cleric, obligations of clerics, can. 286, offence against special obligations

INTRODUCTION

From the first centuries of its existence, the Church disposed of certain material goods. The basis of these financial inflows was primarily the offerings of the faithful. The first Christians handed them over to the clergy for the benefit of those in need, while celebrating the sacraments and restoring to unity with the Church those who had been separated by erroneous teachings or because of persecution [Grzywaczewski 1997, 367–68]. From the very beginning, the Christian community also determined who should be provided with support from church funds [Hannan 1950, 4]. Among those eligible were the clerics themselves who were granted the right to receive remuneration allowing them to lead a decent standard of living [Lewandowski 2019, 62].¹

Prudent concern for the first Christian communities meant that not only money flowed into the church treasury, but also valuables were recognized. St. Augustine in *Tractatus in Evangelium Ioannis* wrote that people brought "gold, silver,

¹ "Satis ergo vobis sint, quae sufficiunt, victus et vestitus et quae omnino necessaria sunt." *Didascalia id est Doctrina catholica duodecim apostolorum et sanctorum discipulorum salvatoris nostri*, in: *Didascalia et Constitutiones Apostolorum*, ed. F.X. Funk, Paderbornae 1905, p. 2–384, II, 25, 1.

precious stones, houses, slaves, estates, farms.”² In order for these offerings to serve according to the donors’ purpose, they had to be sold at an appropriate price. The bishop of Hippo mentioned that he was forced to carry out such transactions personally.³ St. Cyprian considered activities such as: collecting money or other material goods, securing, possible sale or distribution, as a normal activity of the clergy. There was nothing wrong with that. He defined the activities themselves as: *ministerium quotidianum operis*⁴ or *ecclesiasticae administrationis officia*.⁵

Unfortunately, abuse in the form of illegal, inept or even dishonest trade was creeping into the administration of church goods, which necessarily included buying and selling activities [Grzywaczewski 1992, 16]. Characteristic in this regard can be considered the statement of St. Cyprian in *De lapsis*: “Among the priests, there was no devotedness of religion; among the ministers, there was no sound faith [...]. Not a few bishops who ought to furnish both exhortation and example to others, despising their divine charge, became agents in secular business, forsook their throne, deserted their people, wandered about over foreign provinces, hunted the markets for gainful merchandise, while brethren were starving in the Church. They sought to possess money in hoards, they seized estates by crafty deceits, they increased their gains by multiplying usuries.”⁶

1. PRE-CODE LEGISLATION

Since the fourth century, the church authorities have been at least sceptical, and often even negative, about the clerical trade. The Council of Elvira (305) forbade bishops, priests and deacons from leaving their own provinces for commercial purposes or even circumventing their own province in search of a profitable business. Rather, a son, liberated slave, worker, or friend should be sent if necessary.⁷ The above formulation may prove that people accepted the very fact of trading, and only tried to reduce its negative effects in the pastoral field [ibid., 25]. Nevertheless, the actions of the cleric who, out of greed, sought wrongful

² St. Augustin, *Tractate VIII: Chapter II. 1–4*, in: *St. Augustine: Homilies on the Gospel of John; Homilies on the First Epistle of John; Soliloquies*, Vol. VII, ed. P. Schaff, Christian Classics Ethereal Library, Grand Rapids, no. 4, <https://www.ccel.org/ccel/s/schaff/npnf107/cache/npnf107.pdf> [accessed: 24.10.2020].

³ Idem, *Sermon 356: Saint Augustine’s Second Sermon on the Way of Life of the Clergy Who Were Living with Him*, in: *Sermons, (341–400) on Various Subjects*, Vol. III/10, transl. by E. Hill, New City Press, Hyde Park 1995, no. 13.

⁴ St. Cyprian, *Epistle XXIX: The Presbyters and Deacons Abiding at Rome, to Cyprian*, in: *Fathers of the Third Century: Hippolytus, Cyprian, Caius, Novatian, Appendix*, Vol. V, ed. P. Schaff, Christian Classics Ethereal Library, Grand Rapids, no. 1, <https://www.ccel.org/ccel/s/schaff/anf05/cache/anf05.pdf> [accessed: 24.10.2020].

⁵ Idem, *Epistle XLI: To Cornelius, About Cyprian’s Approval of His Ordination, and Concerning Felicissimus*, in: *Fathers of the Third Century*, no. 1.

⁶ Idem, *Treatise III: On the Lapsed*, in: *Fathers of the Third Century*, no. 5.

⁷ *Concilium Eliberitanum decem et novem Episcoporum Constantini temporibus editum eodem tempore quo et Nicaena Synodus habita est*, can. 19, in: Dale 1882, 313–39.

gain were rigorously punished. The Council of Nicaea (325) decided that a cleric who participates in usury, otherwise engages in this practice, or eventually engages in anything for shameful profit, should be removed from the clergy.⁸ The Second Council of Carthage of Africa (419) equally forbade the clergy in participating or having a hand in agricultural trades and business of purely commercial character.⁹

It seems that the above decisions were not fully implemented, because the provinces, remote villages and small towns did not receive the decisions of councils, as well as new theological and philosophical trends. The reason for this could be communication difficulties, as well as the lack of sufficient knowledge of Latin. As a rule, the clergy, not always well educated, like their faithful, used local dialects on a daily basis [Hamman 1989, 295].

The Council of Chalcedon (451) was of significant importance in the development of the legislation prohibiting clerics from engaging in trade. The Council Fathers informed that some clergy, driven by dishonest profit and greed, lease foreign goods, deal with temporal matters, take over the management of the secular property, thus neglecting God's service, decided that in the future no bishop, priest or religious should lease property or deal with worldly interests and did not take charge of foreign goods. Anyone who tries to break the above-mentioned regulations should be punished with penalties.¹⁰

The decisions of the Council of Chalcedon were upheld by the Fourth Lateran Council (1215), which, among the prohibitions concerning the life and ministry of clergy mentioned the prohibition of taking up office and conducting secular trade.¹¹ The Council of Vienne (1311–1312) obliged bishops to rigorously apply canonical norms to cleric publicly engaged in commerce, secular trade or activities inappropriate for the clergy.¹²

All the legal norms developed so far were maintained by the Council of Trent (1545–1563). The Council Fathers recalled that it is fitting for the clergy whom God called to His service, that by their lives they should bear witness to true and

⁸ Sanctum Concilium Nicaenum I, *Canones*, in: *Sacrorum Conciliorum nova, et amplissima collectio*, Vol. II: *Ab anno CCCV ad annum CCCXLVI*, ed. J.D. Mansi, Florentiae 1759, col. 677–84, can. 17.

⁹ *The Canons of the CCXVII Blessed Fathers who Assembled at Carthage. Commonly Called the Code of Canons of the African Church*, in: *The Seven Ecumenical Councils*, Vol. XIV, ed. P. Schaff, H. Wace, Christian Classics Ethereal Library, Grand Rapids, can. 16, <https://www.ccel.org/ccel/s/schaff/npnf214/cache/npnf214.pdf> [accessed: 24.10.2020].

¹⁰ Sanctum Concilium Chalcedonense, *Canones*, in: *Sacrorum Conciliorum nova, et amplissima collectio*, Vol. VII: *Ab anno CCCCLI ad annum CCCXCII*, ed. J.D. Mansi, Florentiae 1762, col. 384–92, can. 3. It is worth paying attention to the fact that the Council Fathers allowed an exception to the promulgated legislation when the bishop entrusted a cleric with the duty of caring for church goods or carrying out charitable activities towards orphans, widows or people in need of help [ibid.].

¹¹ Sanctum Concilium Lateranense IV, *Capitula*, in: *Sacrorum Conciliorum nova, et amplissima collectio*, Vol. XXIII: *Ab anno MCLXVI usque ad ann. MCCXXV*, ed. J.D. Mansi, Venetiis 1778, col. 981–1068, no. 16, 1.

¹² Sanctum Concilium Viennense, *Decreta*, in: *Sacrorum Conciliorum nova, et amplissima collectio*, Vol. XXV: *Ab anno MCCC usque ad ann. MCCCXLIV*, ed. J.D. Mansi, Venetiis 1782, col. 367–412, decree 8, 2.

sincere piety. “Whereas, therefore, the more useful and decorous these things are for the Church of God, the more carefully also are they to be attended to; the holy Synod ordains, that those things which have been heretofore copiously and wholesomely enacted by sovereign pontiffs and sacred councils, relative to the life, propriety of conduct, dress, and learning of clerics, and also touching the luxuriousness, feasting, dances, gambling, sports, and all sorts of crime whatever, as also the secular employments, to be by them shunned, the same shall be henceforth observed, under the same penalties or greater, to be imposed at the discretion of the Ordinary; nor shall any appeal suspend the execution hereof, as relating to the correction of manners.”¹³ The Council Fathers emphatically reminded the bishops that it was their duty to overcome the shortcomings of the faithful entrusted to them, and therefore also to the clergy, that those appointed as pastors would not commit crimes and lead a wicked life. Hence, they were obliged to admonish their subordinates, regardless of their degree of ordination, that in their conversations, statements and knowledge, they should excel among God’s people entrusted to them and not constitute a cause of scandal.¹⁴

It should also be noted that in the matter under analysis, successive popes have spoken repeatedly.¹⁵ After the Council of Trent, this was primarily related to the increase in the missionary activity of the Church. The response from individual popes was about the perceived danger of missionaries acquiring material goods that could then be traded with a lucrative profit even when used to organize daily mission work. The successive popes forbade the practice of trade and forbade the ban with appropriate penalties [Gałkowi 2016, 81–82].

2. THE 1917 CODE OF CANON LAW

The Pio-Benedictine legislator regulated the analysed matter in can. 142 belonging to Title II: *De obligationibus clericorum*, Section I: *De clericis in genere*, Part I: *De clericis*, Book II: *De personis*, and in can. 2380 belonging to Title XVII: *De delictis contra obligationes proprias status clericalis vel religiosi*, Part III: *De poenis in singula delicta*, Book V: *De delictis et poenis* the 1917 Code of Canon Law.¹⁶

¹³ The Council of Trent, *Decree on Reformation (The Twenty-Second Session)*, in: *The canons and decrees of the sacred and oecumenical Council of Trent*, ed. and transl. by J. Waterworth, Dolman, London 1848, chap. I.

¹⁴ *Idem*, *Decree on Reformation (The Fourteenth Session)*, in: *The canons and decrees of the sacred and oecumenical Council of Trent*, chap. I.

¹⁵ For example, Urban VIII, Clement IX, Benedict XIV, Clement XIII or Pius IX.

¹⁶ *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, p. 1–593 [henceforth cited as: CIC/17]. The Code legislator also refers to the analysed matter in can. 592 belonging to Title XIII: *De obligationibus et privilegiis religiosorum*, Part II: *De religiosis*, Book II: *De personis* CIC/17, but in this article, due to the special obligation of religious to lead a poor life, this canon will be omitted.

“Clerics are prohibited from exercising, either for themselves or for the advantage of another, business or trades, either in their own name or by using the name of another” (can. 142).¹⁷ In promulgating the Code disposition, the legislator used two terms: *negotiatio* or *mercatura*. *Business (negotiatio)* should be understood as constant, i.e. professional buying and selling for a profit of any things, e.g. foreign currency, securities, art objects, etc. *Trade (mercatura)* should be understood as buying and selling goods, e.g. food, building materials, etc. with a profit [Bączkiewicz, Baron, and Stawinoga 1957, 332].¹⁸

F. Bączkiewicz, J. Baron and W. Stawinoga distinguish three types of *trade*: *gainful (negotiatio lucrativa)*, *political (negotiatio politica)* and *economic (negotiatio economica)*. According to the above-mentioned commentators, *gainful trade* in the strict sense is that things are bought with the intention of selling them in an unchanged state later in order to achieve a certain profit. In a broader interpretation, on the other hand, *gainful trade* can be understood as buying things in order to sell them in a changed state, i.e. changed by hired workers, in order to achieve a certain profit. *Gainful trade* understood in this way is forbidden to the clergy. We can talk about *political trade* when things are purchased in order to sell them to some community, e.g. to the state, army, etc., i.e. for the public good. Such *political trade* should be understood as permitted to clergy only in the event of necessity, as stated by the bishop. *Economic trade* takes place when someone buys things for himself and sells them over time because he no longer needs them. Such *economic trade* is not forbidden to clergy, as it takes the form of a rational economy. Any exchange operations are forbidden by the clergy. However, it is allowed to invest money (cash) in safe and profitable securities, e.g. in bonds, shares, fair societies and industrial or commercial companies, as long as not to participate directly in the board of this type of enterprise [ibid., 332–33; cf. De Paolis 1995, 698–99].

¹⁷ *The 1917 or Pio-Benedictine Code of Canon Law in English Translation with Extensive Scholarly Apparatus*, curator E.N. Peters, Ignatius Press, San Francisco 2001, p. 71. Can. 142: “Prohibentur clerici per se vel per alios negotiationem aut mercaturam exercere sive in propriam sive in aliorum utilitatem.”

¹⁸ The American canonist explains this in an interesting and quite illustrative way: “What, precisely, is meant by *negotiatio* and *mercatura*? These terms are generally understood to mean habitual buying and selling for the sake of gain – *turpis lucri gratia*. Hence, according to the teaching of canonists, a cleric is not forbidden to sell stock or produce grown on his own farm. He may even buy cattle (feeders), fatten and sell them or their offspring in the market. But to purchase or rent land in order to raise wheat or corn for the sole purpose of selling it would be *negotiatio illicita*. Nowadays it is not forbidden for a cleric to lend money at the usual rate of interest. An important part of our commercial life is taken by *stock companies*, which offer shares, stocks and bonds in every shape and form, as the advertisements prove *ad nauseam*. Some of these companies are solidly established and in a flourishing condition. Is a clergyman allowed to buy their stocks? We see no wrong in this, if the shares are bought with the sole object of getting the dividends. But to buy for the sake of speculation is forbidden. It is also forbidden for a cleric to be a director of such a company, because this would entail a worldly and perhaps distracting occupation, not to speak of the financial risk. Gambling is most detestable in a clergyman, and one who has grown rich by such illicit means should be avoided by his fellows” [Augustine 1918, 96–97].

It should be borne in mind that the legislator in can. 142 forbids cleric to engage in business and trade not only when it comes to their own benefit, but also when such action can bring benefits to, for example, some institution, including church [Grabowski 1948, 175].

“Clerics or religious who carry on trade or business themselves or through others against the prescription of Canon 142 are to be coerced by the Ordinary with penalties appropriate to the gravity of the fault” (can. 2380).¹⁹ The Sacred Congregation of the Council, by the decree *Pluribus ex documentis* of March 22, 1950, prohibited the business or trade in the *latae sententiae* excommunication, reserved in a special way to the Holy See, allowing the penalty of degradation in more severe cases. Superiors who have neglected their duty and failed to prevent the commission of such crimes should be removed from office and declared unfit for office with which the management of persons or property is linked.²⁰

3. THE 1983 CODE OF CANON LAW

The Code legislator regulated the analysed matter in can. 286 belonging to Chapter III: *De clericorum obligationibus et iuribus*, Title III: *De ministris sacris seu de clericis*, Part I: *De christifidelibus*, Book II: *De populo Dei* and in can. 1392 belonging to Title V: *De delictis contra speciales obligationes*, Part II: *De poenis in singula delicta*, Book VI: *De sanctionibus in Ecclesia*.²¹

Pontifical Commission for the Authentic Interpretation of the Code of Canon Law as the source of can. 286 indicates can. 142 CIC/17 and the decree of the Sacred Congregation of the Council *Pluribus ex documentis* of March 22, 1950, and as the source of can. 1392 indicates can. 2380 CIC/17 and the decree of the Sacred Congregation of the Council *Catholica Ecclesia* of June 29, 1950.²²

¹⁹ *The 1917 or Pio-Benedictine Code of Canon Law in English Translation with Extensive Scholarly Apparatus*, p. 754. Can. 2380: “Clerici vel religiosi mercaturam vel negotiationem per se aut per alios exercentes contra praescriptum can. 142, congruis poenis pro gravitate culpa ab Ordinario coerceantur.”

²⁰ “[...] per se vel per alios, mercaturam seu negotiationem cuiusvis generis, etiam argentariam, exercentes, sive in propriam sive in aliorum utilitatem, contra praescriptum can. 142, utpote huius criminis rei, excommunicationem latae sententiae Apostolicae Sedi speciali modo reservatam incurrant et, si casus ferat, degradationis quoque poena plectantur. Superiores vero qui eadem delicta, pro munere suo ac facultate, non impediverint, destituendi sunt ab officio et inhabiles declarandi ad quodlibet regiminis et administrationis munus.” *Sacra Congregatio Concilii, Decretum de vetita Clericis et Religiosis negotiatione et mercatura Pluribus ex documentis* (22.03.1950), AAS 42 (1950), p. 330–31.

²¹ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1–317 [henceforth cited as: CIC/83]. The Code legislator also refers to the analysed matter in can. 672 belonging to Chapter IV: *De institutorum eorumque sodalium obligationibus et iuribus*, Title II: *De institutis religiosis*, Section I: *De institutis vitae consecratae*, Part III: *De institutis vitae consecratae et de societatibus vitae apostolicae*, Book II: *De populo Dei* CIC/83, however, this canon will be omitted in this article due to the special obligation of religious to lead a poor life.

²² Pontificia Commissio Codici Iuris Canonici Authentice Interpretando, *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus. Fontium annotatione et indice analytico-alphabetico*

3.1. Object of the prohibition

The Code legislator in can. 286, as in CIC/17, uses two terms: *negotiatio* or *mercatura*. In the most famous English-language commentaries on CIC/83, these terms have been translated as *business* or *trade* [Beal, Coriden, and Green 2000, 378; Woestman 2006, 198], as *commerce* or *business* [Woodall 2011, 106], or as *commerce* or *trade* [Sheehy, Brown, Kelly, et al. 1995, 164; Marzoa, Miras, and Rodríguez-Ocaña 2004,²³ 382; Caparros and Aubé 2004, 234].

The editors of the online version of the Merriam–Webster dictionary, in use since 1828, understand the notion *business* as: 1) a usually commercial or mercantile activity engaged in as a means of livelihood; 2) a commercial or sometimes an industrial enterprise also; 3) dealings or transactions especially of an economic nature. As synonyms for business, they indicate, among others *commerce* or *trade* terms which mean activity concerned with the supplying and distribution of commodities. The notion of *business* may be an inclusive term but specifically designates the activities of those engaged in the purchase or sale of commodities or in related financial transactions. The notion of *commerce* and *trade* imply the exchange and transportation of commodities.²⁴

Commentators on CIC/83 interpret the analysed matter in a slightly different way.

W.H. Woestman argues that *negotiatio* is a broad notion and refers primarily to transactions made for profit, while *mercatura* indicates a specific type of business and consists of buying and selling goods. He distinguishes between business: 1) *profit-seeking (quaestuosa)*, when a commodity is bought and sold that has not been altered or modified. This is *trade* in the strict sense: a) this takes the form of money changing (*cambium*), if it is money that is bought and sold; b) or speculation, if stocks, bonds, commodities are sold with the intention of making an immediate profit with no intention of long-term investment; 2) *industrial*, if things are bought, manufactured, and then sold with the intention of making a profit: a) it is an industrial business in the strict sense if the production is performed with the participation of employees; b) it is an industrial business in the broad sense if the production is done with own participation or own household [Woestman 2006, 199].

T. Gałkowski, based on the view developed by F. Bączkowiec, J. Baron and W. Stawinoga, points out that *negotiatio* is a broader concept than *mercatura* and applies to all transactions, i.e. activities between the seller and the buyer aimed at

auctus, Typis Polyglottis Vaticanis, Città del Vaticano 1989, a footnote to the can. 286 and 1392. Cf. Sacra Congregatio Concilii, Decretum de ecclesiasticis officiis et beneficiis canonicis instituendis seu pro-videndis *Catholica Ecclesia* (29.06.1950), AAS 42 (1950), p. 601–602.

²³ Originally published as *Comentario exegético al Código de Derecho Canónico*, ed. A. Marzoa, J. Miras, R. Rodríguez-Ocaña, Instituto Martín de Azpilicueta, Ediciones Universidad de Navarra, Pamplona 1996, 1997, 2002.

²⁴ “Business,” in *Merriam-Webster Dictionary*. <https://www.merriam-webster.com/dictionary/business> [accessed: 24.10.2020].

exchanging goods or services. The essence of the transaction is the operation that is performed to create, change or transfer tangible or intangible data. Due to the purpose of making a transaction, regardless of whether it is in the strict or broad sense, he distinguishes five types of it: 1) *gainful transaction* (*negotiatio lucrativa*) – which consists in: a) buying things for the purpose of selling them unchanged at a profit; b) buying things with the intention to sell them more expensive as modified by others; c) purchasing things so that others may use it for a profit; d) buying foreign currency or securities in order to sell them at a profit – this type of the transaction is subject to the prohibition contained by the Code legislator in can. 286; 2) *economic transaction* (*negotiatio oeconomica*) – which consists of buying things for oneself, without the intention of selling it; it can be sold when its usefulness ends for various reasons (e.g. necessity or surplus), even at a price higher than it was purchased – this type of transaction is not prohibited for clergy; 3) *political transaction* (*negotiatio politica*) – which consists of buying things in order to sell them to some community, e.g. to the state, army, parish, and therefore for the public good – if it is done for the purpose of obtaining income, it remains a prohibited activity for clerics; 4) *industrial* (*artisanal*) or *artistic transaction* (*negotiatio industrialis vel artificialis*) – which consists of the purchase of things with the intention of selling them after being processed by oneself and others – because from the very beginning of the act of purchase, a specific item is intended for sale this type of transaction is prohibited for clergy; 5) *financial transaction* (*negotiatio argentaria*) – which consists of all exchange and currency operations and trading in securities (shares, bonds) – assessment of whether such transactions are allowed or not depends on the distinction between ordinary investment and speculation – in principle, it is considered that ordinary investments are allowed, while the stock market speculation, and above all the so-called stock market games (*jeu de la bourse*) prohibited [Gałkowski 2016, 84–86, cf. Bączkiewicz, Baron, and Stawinoga 1957, 332–33].

Undoubtedly, the terms of *negotiatio* or *mercatura* are ambiguous. Summarizing synthetically, these terms should be understood as organized and at least to a certain degree permanent trade in goods consisting in purchase and sale, the purpose of which is profit [De Paolis 1995, 711–12].

Behaviour forbidden to clergy by the Code legislator in can. 286 is due to two reasons: 1) this type of activity should be alien to the clerical state, as well as the obligations arising from the orders, to which the cleric is obliged to devote his time and commitment; 2) this type of activity carries the risk of dishonesty and easy enrichment to the detriment of moral life [Iwanicka 2018, 306].

3.2. Subject of the prohibition

According to the disposition of the Code legislator, the subject of the prohibition specified in can. 1392 are clerics and religious. Due to the strict inter-

pretation of penal law,²⁵ non-clerical members of secular institutes or societies of apostolic life cannot be the subject of the analysed prohibition [Green 2000, 1597].²⁶ According to can. 288, permanent deacons are not bound by the provisions of can. 286, unless the particular law states otherwise. It means nothing else than permanent deacons can involve business or trade unless the particular law does not forbid them. However, the competent ordinary should ensure discreetly that the particular Church will not be responsible for his non-diaconal enterprises [Ambrose 2020, 9].

The clerics incardinated in the personal ordinariates for Anglicans who enter into full communion with the Catholic Church, with the permission of the ordinary, may engage in a secular profession compatible with the exercise of priestly ministry.²⁷

3.3. Penalty for the violation of the prohibition

The Code legislator in can. 1392 penalizes violations of can. 286 and 672: “Clerics or religious who exercise a trade or business contrary to the prescripts of the canons are to be punished according to the gravity of the delict.”

In the penal law of the Church, breaching the above-mentioned prohibition was punishable by a sanction, and therefore the legislator treated it as a crime. The punishment of illegal business or trade is obligatory. The perpetrator of the crime should be punished with a penalty proportional to the gravity of the delict, which does not exclude the penal remedies, observing the principles indicated in can. 1347 § 1-2 [Szyrczyk 2003, 154–55; Bernal Pascual 2004, 1081; Di Mattia 2004, 539; Calabrese 2006, 327].

CONCLUSION

The cleric, whose inheritance is the Lord, knows that his mission, like that of the Church, takes place in the midst of the world and that created goods are necessary for the personal development of man. Nonetheless, he will use such goods with a sense of responsibility, moderation, upright intention and detachment proper to him who has his treasure in heaven and knows that everything is to be used for the edification of the Kingdom of God. He will therefore abstain from those lucrative activities that are not consonant with his ministry. Even though the cleric does not make a public promise of poverty, it is incumbent upon him to lead a si-

²⁵ Can. 18 CIC/83: “Laws which establish a penalty, restrict the free exercise of rights, or contain an exception from the law are subject to strict interpretation.”

²⁶ Until CIC/83, under the decree of the Sacred Congregation of the Council *Pluribus ex documentis* of March 22, 1950, the prohibition of business or trade was also subject to members of secular institutes or societies of apostolic life. *Sacra Congregatio Concilii, Decretum de vetita Clericis et Religiosis negotiatione et mercatura Pluribus ex documentis*, p. 330–31.

²⁷ Congregation for the Doctrine of the Faith, *Complementary Norms for the Apostolic Constitution Anglicanorum Coetibus* (04.11.2009), AAS 101 (2009), p. 991–96, Art. 7 § 3.

ple life and abstain from whatever may smack of worldliness, thereby embracing voluntary poverty in order to follow Christ more closely.²⁸

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²⁸ Congregation for the Clergy, *Directory for the Ministry and the Life of Priests* (11.02.2013), Libreria Editrice Vaticana, Città del Vaticano 2013, no. 83.

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ZAKAZ UPRAWIANIA HANDLU LUB TRANSAKCJI PRZEZ DUCHOWNYCH
WEDŁUG KODEKSU PRAWA KANONICZNEGO Z 1983 ROKU.
ZARYS PROBLEMATYKI

Streszczenie. Uprawianie handlu lub transakcji przez duchownych i zakonników od pierwszych wieków Kościoła było surowo zabronione. Stosowne postanowienia podjęte zostały na soborach w Nicei, Chalcedonie, Lateranie (IV) czy Trydencie. Ustawodawca w Kodeksie Prawa Kanonicznego z 1917 r. analizowaną materię unormował w kan. 142 i 2380. Stanowiły one źródło dla pracy Papieskiej Komisji ds. Autentycznej Interpretacji Kodeksu Prawa Kanonicznego. Zgodnie z dyspozycją ustawodawcy zawartą w kan. 286 Kodeksu Prawa Kanonicznego z 1983 r. „Zabrania się duchownym uprawiania handlu lub transakcji osobiście lub przez innych, czy to na własną, czy na korzyść innych, chyba że za zgodą legalnej władzy kościelnej”. Przekroczenie powyższego zakazu zagrożone zostało sankcją karną obligatoryjną nieokreśloną, którą należy wymierzyć duchownemu lub zakonnikowi stosownie do ciężkości przewinienia.

Słowa kluczowe: duchowny, obowiązki duchownych, kan. 286, przestępstwo przeciwko specjalnym obowiązkom

Informacje o Autorze: Ks. dr Paweł Lewandowski – Katedra Kościelnego Prawa Publicznego i Konstytucyjnego, Wydział Prawa, Prawa Kanonicznego i Administracji Katolickiego Uniwersytetu Lubelskiego Jana Pawła II; e-mail: pawel.lewandowski@kul.pl; <https://orcid.org/0000-0003-4543-4382>