

THE RIGHT OF CHRIST'S FAITHFUL TO THE HOLY SACRAMENTS DURING PANDEMIC CONDITIONS

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Abstract. Human rights, which are vested with both the citizens of the state and the faithful of the Church, are rooted in the inherent and inalienable dignity of the person. In all circumstances, especially in a pandemic, the institutions of Church and State, which are there to serve people, should guarantee, through their representative bodies, that these rights be exercised. The article discusses the legal basis of Christ's faithful's rights to the spiritual riches of the Church and the scope of exercising these rights, as well as addressing the scope of enjoyment of the right to the spiritual riches of the Church in Poland during the COVID-19 pandemic in 2020.

Keywords: pandemic, Church, state, human rights

INTRODUCTION

As citizens and the faithful, people enjoy certain rights. These rights mainly stem from the inherent and inalienable dignity of the person.¹ The person acquires them also through the sacrament of baptism, marriage, ordination as well as by the acquisition of citizenship or membership in an organisation. These rights are granted under God's law and man-made law implemented by competent ecclesiastical and state authorities. In all circumstances, especially in extraordinary conditions, such as the current COVID-19 pandemic, the institutions of Church and State, which are there to serve people, should guarantee citizens and the faithful, through specific nominated and competent bodies, the exercise of their rights. This article will address the right to the spiritual goods of the Church during pandemic circumstances.

¹ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended, Article 30: "The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities."

1. LEGAL GROUNDS FOR THE RIGHT OF CHRIST'S FAITHFUL TO THE SPIRITUAL GOODS OF THE CHURCH

In promulgating the 1983 Code of Canon Law,² in Canon 213, Title I: Obligations and Rights of All Christ's Faithful, John Paul II declared, "Christ's faithful have the right to be assisted by their Pastors from the spiritual riches of the Church, especially by the word of God and the sacraments."³ The executive body of the Holy See, the Congregation for Divine Worship and the Discipline of the Sacrament, with the intent to explain the above statement, define its rationale, and encourage the exercise of this right, resolved as follows in the Instruction⁴ *Redemptionis Sacramentum* of 25 March 2004:⁵ "[...] it is the right of all of Christ's faithful that the Liturgy, and in particular the celebration of Holy Mass, should truly be as the Church wishes, according to her stipulations as prescribed in the liturgical books and in the other laws and norms. [...] the Catholic people have the right that the Sacrifice of the Holy Mass should be celebrated for them in an integral manner, according to the entire doctrine of the Church's Magisterium. [...] the Catholic community's right that the celebration of the Most Holy Eucharist should be carried out for it in such a manner that it truly stands out as a sacrament of unity [...]" (no. 12).

Christ's faithful can assert the the right by virtue of God's law. Because, according to Canon 840 CIC/83, "The sacraments of the New Testament were instituted by Christ the Lord and entrusted to the Church. As actions of Christ and of the Church, they are signs and means by which faith is expressed and strengthened, worship is offered to God and our sanctification is brought about. Thus they contribute in the most effective manner to establishing, strengthening and manifesting ecclesiastical communion [...]" The sacraments and other "liturgical matters by their very nature call for a community celebration, they are, as far as possible, to be celebrated in the presence of Christ's faithful and with their active participation" (Canon 837, para. 2). The overall activity of the Church should be focused on carrying out the work of evangelization and acting as the herald of salvation and God's grace. For "the sanctifying grace is the greatest treasure of mankind in this world; it cannot be compared with anything because the value of one grace surpasses all temporal values; it is life in itself which seeds God's life in us

² *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1–317 [hereinafter: CIC/83].

³ "Ius est christifidelibus ut ex spiritualibus Ecclesiae bonis, praesertim ex verbo Dei et sacramentis, adiumenta a sacris Pastoribus accipiant."

⁴ Canon 34, para. 1: "Instructions, namely, which set out the provisions of a law and develop the manner in which it is to be put into effect, are given for the benefit of those whose duty it is to execute the law, and they bind them in executing the law. Those who have executive power may, within the limits of their competence, lawfully publish such instructions." For more, see: Sitarz 2008, 27–40.

⁵ Congregatio de Cultu Divino et Disciplina Sacramentorum, *Instructio de quibusdam observandis et vitandis circa sanctissimam Eucharistiam Redemptionis Sacramentum* (25.03.2004), AAS 96 (2004), p. 549–601.

and around us." Grace is embodied in a special way in individual sacraments, actual graces, and the graces of state and affects the entire temporal life; above all, it is a constant force that makes the Church and renders society physically and spiritually healthy. Even a temporary limitation or deprivation of access to the sacraments, to sanctifying grace, and to the spiritual goods of the Church is with the great detriment to the person, both in the spiritual and physical sense.

Therefore, the right to enjoy spiritual assistance sought from the pastors of the Church requires such administration of the preaching of the word of God, the sacraments, and all means employed to sanctify Christ's faithful that all these faithful can benefit from them by satisfying their needs in accordance with their specific vocation. Since the faithful have this right under God's law, the pastors have a duty to enable them to enjoy it. The highest ecclesiastical legislator says, "Sacred ministers may not deny the sacraments [under three conditions – M.S.] to those who opportunely ask for them, are properly disposed and are not prohibited by law from receiving them" (Canon 843, para. 1). The question is: Who among the clergy is obliged to assist the faithful?

2. OBLIGED ENTITIES

Canon 213 reads that the obligation to provide assistance from the spiritual riches of the Church in the strict sense rests with bishops and other members of the clergy with episcopal authority. In a broader sense, all the clergy are obliged according to their assumed office. This justly obligation (*ex iustitia*) rests with those members of the clergy who exercise an appropriate pastoral office (*ex officio*), e.g. bishop, parish priest, chaplain, or rector, and are obliged to perform certain ministries (Canons 387, 528, 530, 767, 771, 777, 986). On the other hand, other priests, whom the bishop has not entrusted any pastoral office, e.g. working at universities, in the judiciary or in ecclesiastical administration, are obliged to provide spiritual assistance to the faithful by virtue of Christian love (*ex caritate*).⁶

It is the obligation and inherent right of the Church, independent of any human authority, to preach the Gospel to all peoples. For this purpose, it can even use its own means of social communication because Christ entrusted to the Church the deposit of faith, so that by the assistance of the Holy Spirit, she might conscientiously guard revealed truth, penetrate it, proclaim it, and expound it (Canon 747, para. 1).

Hence, the question is whether this God's law (*ius not lex*) to demand the spiritual goods of the Church "independent of any human authority" can be limited by any human authority, whether ecclesiastical or state, and on what terms and to what extent, e.g. during a pandemic.

⁶ For more, see Krukowski 2005, 30–31; Cenalmor 1996, 91–98.

3. THE SCOPE OF EXERCISING THE RIGHT TO THE SPIRITUAL GOODS OF THE CHURCH

With regard to the scope of exercise by Christ's faithful of their inherent rights, in Canon 223 the highest legislator says, "§ 1. In exercising their rights, Christ's faithful, both individually and in associations, must take account of the common good of the Church, as well as the rights of others and their own duties to others. § 2. Ecclesiastical authority is entitled to regulate, in view of the common good, the exercise of rights which are proper to Christ's faithful."

There is a commonly shared opinion in the literature on the subject that the rights of the faithful may be limited by the ecclesiastical authority only on very serious grounds, such as: 1) common good and 2) the obligations of the faithful towards the rights of others. However, it should always be kept in mind that any limitation of subjective rights in the Church, enjoyed both under God's and human law, may be imposed exceptionally, based on profoundly serious and pertinent reasons and only by statute in order to be lawful.⁷

What follows, a question arises of whether the state of pandemic is a serious and pertinent reason for the ecclesiastical or state authority to curtail Christ's faithful's right to the spiritual riches of the Church, the Word of God and the sacraments. Each (authority body) which intends to limit this right should, first of all, take into account the following directions of CIC/83:

1) "The Church has the right always and everywhere to proclaim moral principles [...] in so far as this is required by fundamental human rights or the salvation of souls" (Canon 747, para. 2);

2) "The people of God are first united through the word of the living God, and are fully entitled to seek this word from their priests [...]" (Canon 762);

3) "Since liturgical matters by their very nature call for a community celebration, they are, as far as possible, to be celebrated in the presence of Christ's faithful and with their active participation" (Canon 837, para. 2);

4) "The ordering and guidance of the sacred liturgy depends solely upon the authority of the Church, namely, that of the Apostolic See and, as provided by law, that of the diocesan Bishop" (Canon 838, para. 1).

4. THE EXERCISE OF THE RIGHT TO THE SPIRITUAL GOODS OF THE CHURCH IN POLAND DURING THE 2020 COVID-19 PANDEMIC

The exercise of the right to the spiritual goods of the Church has been limited severely by both the ecclesiastical and state authorities.

On 20 March 2020, the Minister of Health issued a regulation declaring the state of epidemic in the territory of the Republic of Poland.⁸ On 31 March 2020, the Council of Ministers imposed certain restrictions and bans as well as issuing

⁷ For more, see Krukowski 2005, 41–42; Arrieta 1991, 29–30.

⁸ Journal of Laws, item 491.

instructions in connection with the epidemic.⁹ These decisions restricted the constitutional right to freedom of religion, which includes “the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services” (Article 53(2) of the Constitution of the Republic of Poland). The 20 March 2020 regulation, in its para. 7, enforced a restriction that no more than 50 people in total, including all participants and ministers, can be present during a religious worship service in a specific area or site, both inside and outside the premises. In para. 1 of the regulation of the Minister of Health of 24 March 2020 amending the previous and aforesaid regulation,¹⁰ the number of participants in worship services was reduced to five, exclusive of the ministers or individuals employed by a funeral facility in the event of a funeral, until 11 April 2020. Another regulation of the Council of Ministers of 19 April 2020 establishing certain restrictions, orders, and prohibitions in connection with the state of epidemic¹¹ somewhat eased the ministerial limitations. Until 20 April 2020, during religious worship services, including religious activities or rites, one service participant per 15 m² was allowed in a public structure intended for religious practices, exclusive of the ministers. On the other hand, no more than 50 people, exclusive of the ministers, the cemetery personnel or funeral establishment employees, were allowed to attend a single burial ceremony in a cemetery (para. 9(1)). In the Regulation of the Council of Ministers of 16 May 2020 establishing certain restrictions, orders, and prohibitions in connection with the state of epidemic,¹² religious worship services in public places, including in buildings and other sites intended for religious worship, was suspended until further notice (para. 7(1)). In addition, as from 17 May 2020, during religious worship services, including religious activities or rites, one service participant per 10m² was allowed in a public structure intended for religious practices, with the exception of the ministers. The limitation did not cover buildings of an area less than 50m² in which five participants were allowed at the same time, exclusive of the ministers (para. 8(1)). Another regulation of the Council of Ministers of 29 May 2020¹³ removed that limitation. Pursuant to para. 25(8) of the Regulation of the Council of Ministers of 7 August 2020 establishing certain restrictions, orders, and prohibitions in connection with the state of epidemic,¹⁴ gatherings organized by religious associations were allowed in the so-called red zones up to the

⁹ Journal of Laws, item 566.

¹⁰ Journal of Laws, item 522.

¹¹ Journal of Laws, item 697.

¹² Journal of Laws, item 878.

¹³ Journal of Laws, item 964.

¹⁴ Journal of Laws, item 1356.

limit of 50% of the regular occupancy of the religious site, “that is with the exception of ministers or cemetery personnel or employees of a funeral establishment facility home in the event of a burial ceremony, and that all such participants meet the obligation of covering their mouth and nose” (excluding the ministers). Para. 28(8) of the Regulation of the Council of Ministers of 9 October 2020 establishing certain restrictions, orders, and prohibitions in connection with the state of epidemic¹⁵ provided that religious gatherings were allowed subject to the condition that a distance was maintained of not less than 1.5 m between the individual participants and that no more than 1 person could occupy 15 m² of the area of the site (until 29 November 2020, 1 person per 7 m² from 30 November 2020). The Regulation of 16 October 2020 amending the regulation establishing certain restrictions, orders, and prohibitions in connection with the state of epidemic¹⁶ resolved that religious gatherings could be held at religious sites (with a distance of not less than 1.5 m between individual worshippers) for “no more than 1 person per 4 m² of the site area in the yellow zone or 1 person per 7 m² of the site area in the red zone [...]” Another regulation of the Council of Ministers of 26 November 2020¹⁷ reduced the limit to 1 person per 15 m².

The above regulatory obstacles to access to the spiritual goods of the Church raised serious doubts. The main question was the lawfulness of the instituted measures, their proportionality, the real need, and the implementation procedure.

The relevance, necessity, and adequacy of the measures were assessed by a team of experts whose competence cannot be challenged. It is hoped that they approached the problem with utmost care and prudence. Yet, admittedly, the restrictions imposed on the Church and other commonly accessed facilities, such as shops or means of public transport, were evidently incommensurable and uneven, which calls the authorities’ policy into question. Bishop Edward Kawa aptly inquired, “Is the virus so pious that it goes to church but avoids supermarkets?” Also, in a letter to the Prime Minister of the Republic of Poland, the Chair of the Polish Episcopal Conference requested a more coherent and fair system of limiting the number of people in public space, including in temples. The Secretary General of COMECE pointed out that the reopening of temples must be carried out by the state authorities in dialogue with Church representatives and based on transparent and non-arbitrary rules. Also secular groups, both domestic and foreign, demanded that the right to the spiritual goods of the Church, as well as the freedoms guaranteed in national and international legal acts, be restored. The best example of this is the Federal Court’s ruling that the New York City authorities must allow churches to be opened and services to be held inside and outside temples on the same basis that mass street protests and access to shopping malls were allowed. The ruling was a consequence of a petition filed by the lawyers from the

¹⁵ Journal of Laws, item 1758.

¹⁶ Journal of Laws, item 1829.

¹⁷ Journal of Laws, item 2091.

Thomas Moore Association on behalf of several different religious groups. No Roman Catholic diocese or parish was a party to this lawsuit.

Under canon law, both the Holy See, the Chair of the Polish Episcopal Conference and the Presidium of the Conference, as well as individual diocesan bishops, issued many appeals, guidelines, as well as decrees and dispensations in which they fully adhered to the safety rules introduced by the Polish government during the pandemic.

CONCLUSION

In conclusion, during the COVID-19 pandemic in Poland, the right to the spiritual goods of the Church granted under God's law, especially to the Word of God and the sacraments, was restricted dramatically both by the ecclesiastical and state authorities. The Constitution of the Republic of Poland¹⁸ and the Concordat¹⁹ were violated, primarily the principles of the autonomy of the Church, freedom of worship, and equality before the law. Questionable is also the lawfulness of the prohibition of celebration of the sacraments and sacramentals by some bishops, as well as the granting of dispensation concerning God's law for an indefinite period of time, which, according to Canon 85 CIC/83, is the relaxation of a merely ecclesiastical law in a particular case.

Given the above facts and binding law altogether, on the 100th anniversary of Karol Wojtyła's birth, his words uttered at the beginning of his pontificate as John Paul II, "Open the door to Christ [...]," are still valid. The People of God have a legitimate right to keep calling out, "We want God [...];" we have the right under God's law to demand the spiritual goods held in the Church's deposit, especially the Word of God and the sacraments. Christ's words, "Give to Caesar what belongs to Caesar, and give to God what belongs to God" (Matthew 22:21) have not been invalidated. And Christ keeps asking international, state, and territorial authorities patiently, especially the contemporary successors to the apostles, "Let the children come to me" (Mark 10:14).

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¹⁸ See, e.g. Articles 25, 31, 32, 53 of the Constitution of the Republic of Poland.

¹⁹ See, e.g. Articles 1, 5, 8 of the Concordat between the Holy See and the Republic of Poland done at Warsaw on 28 July 1993 (Journal of Laws of 1998, No. 51, item 318).

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