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The essence of the evangelical counsel of poverty is how the individual practising it sees temporal possessions. There is no doubt that this primarily concerns the spiritual aspect, but the evangelical counsel of poverty also has a legal dimension.

The evangelical counsel of poverty refers to all legal relationships concerning temporal possessions. However, its most significant and spectacular concern is the right of ownership accruing to the religious.

Indeed, ownership is by its very nature the most extensive right to a particular item (goods), hence constituting the most essential part of the evangelical counsel of poverty.

This paper analyses how and why the evangelical counsel of poverty, taking the form of the vow of poverty, affects and determines the right to ownership accruing to the religious. It investigates whether and how the right to ownership accruing to the religious is limited and divested.

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THE RIGHT OF OWNERSHIP ACCRUING TO THE RELIGIOUS ACCORDING TO THE CODE OF CANON LAW AN OUTLINE

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Bartosz Rakoczy ^α & Krzysztof Bukowski ^ο

I. INTRODUCTION

The religious state is essentially neither laity nor clergy. It is deemed the third state specifically bound by the evangelical counsels of obedience, chastity and poverty¹. From the analysed point of view, the evangelical counsel of poverty, and partly obedience, has special importance.

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This paper analyses how and why the evangelical counsel of poverty, taking the form of the vow of poverty, affects and determines the right to ownership accruing to the religious. It investigates whether and how the right to ownership accruing to the religious is limited and divested.

II. THE CONCEPT OF THE RIGHT OF OWNERSHIP ACCRUING TO THE RELIGIOUS ACCORDING TO CANON 668 OF CCL. A GENERAL OUTLINE

A natural consequence of practising the evangelical counsel of poverty by the religious state is the regulation of the relationship between the religious and temporal goods by law. A common legal norm for all the religious is Canon 668 of the Code of Canon

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Law ², reading “§ 1. Before first profession, members are to cede the administration of their goods to whomever they prefer and, unless the constitutions state otherwise, are to make disposition freely for their use and revenue. Moreover, at least before perpetual profession, they are to make a will which is to be valid also in civil law.

§ 2. To change these dispositions for a just cause and to place any act regarding temporal goods, they need the permission of the superior competent according to the norm of proper law.

§ 3. Whatever a religious acquires through personal effort or by reason of the institute, the religious acquires for the institute. Whatever accrues to a religious in any way by reason of pension, subsidy, or insurance is acquired for the institute unless proper law states otherwise.

§ 4. A person who must renounce fully his or her goods due to the nature of the institute is to make that renunciation before perpetual profession in a form valid, as far as possible, even in civil law; it is to take effect from the day of profession. A perpetually professed religious who wishes to renounce his or her goods either partially or totally according to the norm of proper law and with the permission of the supreme moderator is to do the same.

§ 5. A professed religious who has renounced his or her goods fully due to the nature of the institute loses the capacity of acquiring and possessing and therefore invalidly places acts contrary to the vow of poverty. Moreover, whatever accrues to the professed after renunciation belongs to the institute according to the norm of proper law”.

Interestingly, Canon 668 does not use the terms 'ownership' and 'right of ownership' at all. This provision does not refer to the rights of the religious but rather to performing particular legal acts (legal transactions) regarding temporal goods (assets).

However, Canon 668 provide for far-reaching consequences also, and perhaps most importantly, for the right to ownership accruing to the religious. Although this provision encompasses more than this, I will focus

¹ J. Aumann, *Zarys historii duchowości*, Kielce 2003, p. 36; J. Małecki, *Zakony męskie w Polsce*. Słownik, ed. 2, Kraków 2000, p. 89.

² Codex Iuris Canonici, auctoritate Joannis Pauli II PP promulgates, hereinafter Code of Canon Law (CCL).

exclusively on the right of ownership. Canon 668 gives rise to very significant divisions and classifications³.

First and foremost, in this provision, the lawmaker makes a clear distinction between the legal status of the religious who have not taken their perpetual vows yet and those who have already taken such vows. The first is covered by § 1, and other provisions refer to the perpetual profession.

This division is significant for exercising the right of ownership since the canon law institution of renouncing goods applies to perpetual profession only. However, § 1 implies that a religious who has not taken perpetual vows only has a legal obligation to cede the administration of one's goods to another person.

Secondly, Canon 668 also distinguishes between two different forms of the vow of poverty. The first comprises a renouncement of goods. The legal obligation to renounce goods exists only if such renunciation is required due to the nature of the particular religious institute. Therefore, contrary to the common belief, not all the religious must renounce their goods. This obligation does exist but only for members of religious institutes that require such renunciation of goods.

There is also a second option where a religious is not required to renounce goods but has a legal obligation to dispose of them subject to the permission of their superior.

The first solution is characteristic of monasteries, and the second of congregations, but this is not a juridical rule. Thirdly, the canon distinguishes between matters regulated by civil law and those regulated by the proper law (constitution) of the religious institution. Moreover, it makes several references to proper law in various contexts.

This shows that the lawmaker recognises the significant role of the proper law of the religious institute⁴. However, there is nothing strange about adopting this solution as charisma is an essential element of a religious institute. Not only does the lawmaker accept but even expects variations between religious institutes. Thus, differences between religious institutes are completely natural and lead to variations in their proper

law. It is the proper law that constitutes the essence and nature of the particular religious institute.

Po przeanalizowaniu zagadnień ogólnych regulowanych w kanonie 668 KPK przejść do kwestii bardziej szczegółowych.

III. RENUNCIATION OF GOODS

In the context of Canon 668 of the Code of Canon Law, renunciation of goods seems a solution of canon law with the most far-reaching consequences, affecting the right of ownership, but it is also the most essential one.

The CCL itself formulated three conditions regarding the renunciation of goods, one of them being relative.

Firstly, renunciation of goods applies only to members of religious institutes that require renouncing them. Not every religious institute requires that renunciation. Thus, the obligation to renounce goods should expressly stem from the proper law of the religious institute.⁵

Secondly, renunciation refers to perpetual profession only, so a religious who has not taken perpetual vows cannot renounce goods even if the nature of the religious institute requires it. Simultaneously, the ecclesiastical lawmaker does not specify whether this concerns religious institutes of men or women⁶.

The third condition is that goods should be renounced in a form valid even in civil law. However, this condition is relative as the ecclesiastical lawmaker underlines that this refers to a situation where the renunciation of goods is possible in terms of civil law. On the contrary, if civil law does not allow that renunciation, this condition does not need to be fulfilled⁷.

It should be emphasised that the possibility to renounce goods will be essentially determined by civil law and not by canon law. If any institution (or institutions) of the particular legal system allows for the renunciation of goods, this condition should be by all means fulfilled. If, however, the legal system does not provide for such an option, the condition does not need to be fulfilled. A need for extended interpretation arises should be highlighted in this case. It is not only about the institution of renunciation of goods being strictly provided for by the particular system of civil law, but also about all institutions of civil law leading to the same

³ More about this provision see R. Smith, [in:] J. p. Beal (ed.), J. A. Coriden (ed.), T. J. Green (ed.), *New Commentary on the Code of Canon Law*, edition 2, New York/Mahwah 2000, p. 834 et seq.; A. Benlloch Poveda (ed.), *Código de derecho canónico*, edition 12, Valencia 2002, p. 320; G. di Mattia, [in:] *Exegetical Commentary on the Canon Law*, v. II/2, Montreal/ Chicago 2004, p. 1783 et seq.; A. Chrapkowski, J. Krzywda, *Komentarz do Kodeksu Prawa Kanonicznego*, v. II/2, Warszawa 2006, p. 103 – 104; *Codice di diritto canonico. Commentato*, edition 3, Milano 2009, p. 594 et seq.; P. Majer (ed.), *Kodeks Prawa Kanonicznego. Komentarz*, edition 2, Warszawa 2023, p. 435;

⁴ Vide J. Kąkowski, *Konstytucje i inne zbiory prawne instytutów życia konsekrowanego według Kodeksu Prawa Kanonicznego z 1983 r.*, PK 1986, v. 1-2, pp. 149-185.

⁵ F. Bogdan, *Prawo zakonów, instytutów świeckich i stowarzyszeń życia apostołskiego*, Poznań 1988, p. 45

⁶ B. W. Zubert, *Instytuty życia konsekrowanego i stowarzyszenia życia apostołskiego*, [in:] *Komentarz do Kodeksu Prawa Kanonicznego z 1983 r.*, v. II/3, Lublin 1990, p. 67

⁷ D. J. Andrés, *Il diritto dei religiosi*, Roma 1990, p. 78

effect of the renunciation of goods as expected by the ecclesiastical lawmaker⁸.

The lawmaker himself does not define renunciation of goods⁹. This term is sometimes defined in the proper law of the religious institute, but mostly by indicating the consequences of such renunciation. In Canon 668 § 5, the ecclesiastical lawmaker himself refers to the consequences of that renunciation.

As a fundamental legal consequence of the renunciation of goods, the religious lose all economic rights accruing to them upon making a perpetual profession, including the right to property. Therefore, from the analysed point of view, as a result of taking perpetual vows, the religious should renounce and lose the right to ownership of all assets, either immovable or movable. The loss of this right to ownership should be unconditional and irrevocable.

The ecclesiastical lawmaker is completely silent about specific items the property of the religious should renounce. This issue can be regulated by the proper law of the religious institute, but, in principle, proper law does not regulate it either. Thus, it is the religious who decide for whose benefit they can disown property accrued to them. No legal obstacles exist to renounce the goods for the benefit of the religious institute but this can also be done for the benefit of the family or any legal entity whatsoever.

Furthermore, renunciation of goods affects the ability to acquire them in the future. The religious will not be capable of acquiring such goods in the future. Civil law interprets the loss of this capacity, if any, in a completely different manner. Generally, the systems of secular law do not provide for the religious to lose their competence and legal capacity due to the renunciation of goods according to canon law.

After perpetual vows of poverty, all goods that the religious acquire in the future will accrue to the religious institute. The solution adopted by the ecclesiastical lawmaker results from the fact that the religious is not capable of acquiring such goods.

IV. LIMITATIONS ON EXERCISING THE RIGHT OF OWNERSHIP

As indicated above, Can. 668 par. 3 CCL required that the religious renounced the goods if so required by the nature of the religious institute. In contrast, if the obligation to renounce goods does not stem from the nature of the religious institute, the religious do not need to renounce them. Therefore, a question arises about what the vow of poverty really is.

If the nature of the religious institute does not imply a necessity to renounce goods, the vow of poverty does not deprive the religious of their right of ownership but makes the exercise of this right dependent on the permission of their superior.

No loss of the right of ownership whatsoever takes place here. The religious retains the right of ownership of all the goods that were their property upon making the perpetual profession. Furthermore, in contrast to a religious who renounced goods, not only does he/she keep the right of ownership but will be able to acquire it in the future, thus, remaining capable of acquiring the goods in the future. The CCL attaches the legal consequence being the loss of capacity to acquire goods only to the vows of poverty by which the goods are renounced.

In this case, however, the principle of Can. 668 CCL will apply – whatever a religious acquires (...), the religious acquires for the institute (*qui monachus aquiri, pro monasterio aquiri*). This means that, although the religious do not lose their capacity to acquire goods for themselves, this capacity remains fiction since everything they acquire for themselves, they will acquire for the religious institute.

Of course, this rule does not apply automatically, and not all the goods acquired by the religious immediately become the property of the religious institute by operation of the law alone. The religious will acquire the goods for themselves but will be obliged to assign these goods (items) to the religious institute. This is more about the obligation to transfer the right of ownership to the religious institute than about the effect of transferring the right of ownership by operation of the law alone. From the point of view of the religious institute, it can claim that the religious transfer the right of ownership acquired by the religious to that institute.

The religious, who have not renounced the goods due to the nature of their religious institute, will retain the right of ownership, but exercising this right will depend on the permission of their superior.

It should be highlighted that the right of ownership consists of several powers accruing to the owner. Listing these powers is pointless as their catalogue is not closed. The owner will certainly have the right of possession, use, the right to derive revenue, the right of administration, and disposal of such property etc.

However, the ecclesiastical lawmaker does not specify which powers of the religious depend on the permission of their superiors. He does not stipulate that the religious need the permission of their superior in exercising all the powers, which would be a general clause. The fact that the ecclesiastical lawmaker remains silent in that respect implies that it is the norm of the proper law of the religious institute that should regulate these issues specifically.

⁸ B. Rakoczy, *Cywilnoprawne skutki zrzeczenia się dóbr przez zakonnik w polskim prawie cywilnym. Zarys problematyki*, *Studia z Prawa Wyznaniowego*, 2021, v. 24, pp. 171-185

⁹ Vide V. de Paolis, *I beni temporali della Chiesa*, Bologna 2011, p. 56 et seq.

Proper law should regulate three essential issues – which powers of the religious should depend on their superiors' permission, which superior is empowered to grant permission to exercise the rights, and what steps should the religious and the superior take to ensure that this permission is lawful. Whereas, in the latter case these could be general rules of permission granted by superiors and not only regulations concerning property. Of course, proper law can regulate the superior's permission in matters related to property separately, irrespective of the general rules adopted in that proper law.

V. THE RIGHT OF OWNERSHIP ACCRUING TO RELIGIOUS IN TEMPORARY VOWS

The right of ownership accruing to a religious who has taken temporary vows only is regulated separately by Canon 668 § 1. This provision implies that such a religious does not lose the right of ownership. The lawmaker only requires them to cede the administration of their assets to another person. No change in ownership occurs in the case of a religious who has not taken perpetual vows. They remain the owner, so they retain the right of ownership of movable and immovable assets

However, entrusting the administration of such assets to another person deprives the religious who have taken temporary vows of certain powers making up the right of ownership. Indeed, they are deprived of the right of possession, and the right to use and dispose of the property. Although they can derive benefits from the thing, they cannot make use of such benefits. However, they do not lose their power to enter into legal transactions regarding assets owned by the religious in temporary vows. Thus, they will not lose the capacity to dispose of things. In addition, they will retain their capacity to acquire the right of ownership of other assets, either movable or immovable¹⁰.

VI. THE RIGHT OF OWNERSHIP ACCRUING TO RELIGIOUS RAISED TO THE EPISCOPATE

Property rights of religious raised to the episcopate are regulated by Canons 705 through 707 CCL and in particular Canon 706. Can. 706 CCL stipulates “- The religious mentioned above:

1. If he has lost the right of ownership of goods through profession, has the use, revenue, and administration of goods which accrue to him. a diocesan bishop and the others mentioned in can. 381, §2, however, acquire property on behalf of the particular church.; others, on behalf of the institute or the Holy See insofar as the institute is capable or not of possession;

2. If he has not lost the right of ownership of goods through profession, recovers the use, revenue, and administration of the goods which he had; those things which accrue to him afterwards he fully acquires for himself;
3. In either case, however, must dispose of goods according to the intention of the donors when they do not accrue to him personally”.

The vows of poverty taken by a religious raised to the episcopate are considerably commuted. As noted by D. J. Andrés, this is due to the situation in which the bishop has found himself. Among other things, the strict rules are alleviated in connection with special dignity related to the bishop's rank¹¹.

Can. 706 CCL refers to Canon 668 § 4 CCL. Like in Canon 660, a division of the vows into solemn and simple ones can be noticed.

Can. 706 CCL. The religious who have renounced goods recover the use and administration of the goods they receive.

Yet, it should be highlighted that the religious promoted as bishop will not recover the right to acquire property on his own behalf. A diocesan bishop or one performing the function described in Can. 368 CCL acquires property for the benefit of his particular church. If, however, the religious who has lost the capacity to acquire and possess property through profession and does not perform the function described in Can. 368 CCL acquires goods for their religious institute unless that institute has no capacity to acquire the goods in which situation the religious acquires the goods for the Holy See.

In this case, the vow of poverty is modified by recovering the right to use and administer the goods a religious promoted to bishop receives. Therefore, no approval from a superior is required to administer and use the item. The sanction of invalidity does not apply to measures undertaken by the bishop either.

However, this does not affect individual acquisitions in any way; what the bishop acquires, he does not acquire for himself by only for entities mentioned in Canon 706 CCL. It should be emphasised that regarding the right to property, the entity for which the religious acquires the goods is of secondary significance. What is essential is that he does not acquire them for himself.

Note that the powers constituting the right of ownership refer only to goods he acquires after his promotion to bishop. On the other hand, a religious promoted to bishop does not recover the powers constituting the right of ownership of the goods he acquired before his promotion. These goods are governed by Can. 668 CCL.

¹⁰ L. Sabbarese, *Diritto canonico*, Bologna 2015, p. 98;

¹¹ D. J. Andrés, *Il diritto*, p. 54

The legal status of a religious who, in connection with his vow of poverty, was not deprived of the capacity to acquire and possess, hence retaining title to the property, also changes. In such circumstances, the religious promoted to bishop recovers the use, revenue and administration of the assets he owns. All the goods he will acquire, he will acquire for himself.

The situation of a religious promoted to bishop who renounced goods is analogous to that of a religious promoted to bishop who was not obliged to renounce them. In both cases, the ecclesiastical lawmaker alleviates the vow of poverty and bishops only recover their right of use and administration.

However, it is essential whether a religious, who was later promoted to bishop, had previously lost his right of ownership. The one who previously renounced goods is not capable of acquiring the goods as his property. He will only recover the administration of the goods. In contrast, for a religious who, in connection with his vow of poverty, did not lose his capacity to acquire and hold property, or own it, the loss of administration of the goods was the only limitation on their use. The poverty he vowed, in that case, made this use dependent on the decision of his superior, but whatever he acquired, he acquired for the religious institute. In this case, the ecclesiastical lawmaker restores him the capacity to acquire for himself (in his own name and on his own behalf), which, indeed, stays the operation of the rule "whatever a religious acquires (...), the religious acquires for the institute".

For a religious promoted to bishop, who made the vow of poverty, but after promotion to bishop did not lose his capacity to acquire and possess property and his right of ownership of previously possessed goods, poverty in the legal sense is fiction.

Can. 706 CCL makes the legal consequences dependent on his promotion to bishop. Some authors note that promotion to bishop is a provision consisting of three acts that are quite distant in time - designation, nomination and canonical possession¹². The most significant of these three acts is the nomination, so this is the moment at which it should be deemed that the conditions for promotion to the episcopacy have been met.

VII. CONCLUSIONS

To sum up, the Code of Canon Law referring to the evangelical counsel of poverty quite significantly limits and even deprives the religious of the right of ownership accruing to natural persons. The basic division in Can. 668 CCL refers to the obligation to renounce goods of the norm of proper law of the religious institute so require. This means that not in

every case does the vow of poverty involve renunciation of goods - such a requirement must expressly stem from the constitution of the institute.

The religious required to make the vow of property loses the right of ownership of assets they owned upon making the vow. The renunciation of goods results in the loss of the right of ownership but also of the capacity to acquire such goods in the future.

If a religious institute does not require renunciation of goods, the religious making perpetual vows of poverty are not deprived of the right of ownership, only the use of this right depends on the consent of their superior. They do not lose the capacity to acquire property on their own behalf either, but it should be remembered that "whatever a religious acquires (...), the religious acquires for the institute".

The religious who have made temporary vows are not deprived of the right of ownership and the capacity to acquire property on their own behalf. They are only obliged to temporarily cede the administration of the goods to another person.

The perpetual vow of poverty is modified for the religious promoted to bishop as they recover the use, revenue and administration of the goods.

Regarding the religious who renounced goods, the vows of poverty are modified and alleviated and for the religious who were not required to renounce goods but the exercise of whose right of ownership was dependent on the consent of superiors, the modification related to the promotion to the episcopate was practically the alleviation of all burdens due to the vow of poverty.

¹² F. Bogdan, Prawo, p. 156 et seq.