

# Is the Catholic Church Liable for Damage Caused by Pedophile Priests?

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**Abstract—** The article refers to the subject matter of the responsibility of the Roman Catholic Church and its legal persons for the damages related to sexual abuse of children committed by priests. The Author quotes relevant American experience as well possible bases of liability to be found in Polish law. The article also analyzes possible problems connected with practical application of legal regulations referring to vicarious liability in the light of the specifics of the Church.

**Index Terms—** the Roman Catholic Church, pedophilia, priests, liability.

## I. INTRODUCTION

Recently, numerous scandals related to sexual abuse of minors committed by Catholic priests have been revealed in Poland and abroad. In the last decade 3,420 credible allegations of sexual abuse with priests as perpetrators were reported to the Vatican Congregation for the Doctrine of the Faith, and as a consequence, around 1,000 priests lost their clerical state and 2,572 priests were penalised with church punishments. In Poland between 2010 and 2013, at least 13 priests were convicted of sex crimes against children, and in 27 cases child sexual abuse was proven (Boczek, 2016). Such cases cause an outrage in the public opinion and become a reason for discussion on various topics, such as the issue of tightening punishments for sexual offenders, reform of the Catholic Church or the role of the state organs in investigating cases of pedophilia among clergy. However, for lawyers the most interesting seems to be the issue of the responsibility of the Church and church legal persons for damages caused by crimes against sexual freedom committed by clergymen. While the tortious liability of the perpetrators of these crimes does not raise any doubts, such doubts may be raised in case of the responsibility of the Church as an institution.

The essence of this problem was aptly expressed by M. Nesterowicz who pointed out that ‘the Church’s (diocese) liability for damages is important, because the perpetrators (priests) usually do not have any property or assets from which they could compensate the crime victims, and they made vows of poverty so their wealth is only limited to personal belongings’ (Nesterowicz, 2014). Therefore, it is not surprising, that victims expecting difficulties in enforcing their claims from individual perpetrators of harassment address their complaints to the institutional Church. In seeking redress or compensation, victims often point to examples of other countries, such as the United States, Ireland or Australia, where, as a result of lawsuits or out-of-court settlements, victims of sexual abuse have been compensated by the institutional Church, which has even led to the bankruptcy of some dioceses (Nesterowicz, 2015).

In view of the subsequent cases of child sexual abuse and claims filed against the Church and church legal persons, Polish lawyers are also facing the problem of deciding whether, and if so, on what basis, church institutions are liable for damages caused by pedophile priests. It is worth noting that the first final judgment of this type has already been passed. Poznań District Court in a decision upheld by the judgment of the Poznań Court of Appeals of 2 October 2018 (ref. no I ACa 539/18), adjudicated that the Society of Christ Fathers for Poles Living Abroad shall pay a million zlotys of compensation and life annuity for a woman who as a child was imprisoned and raped by a priest who was member of the aforementioned society. who was convicted for these acts (<http://www.orzeczenia.poznan.sa.gov.pl>). However, the sued society filed a cassation appeal, indicating that the direct perpetrator committed the sexual offenses ‘on his own account’ and therefore there is no basis to establish the responsibility of the society. This is in line with the opinion previously expressed by the spokesman of the Polish Episcopate, who stated that ‘...the Church will not pay compensation to victims of



pedophile priests. Let it be done by the offender'. (<http://www.polskieradio24.pl>).

The judgment of the Supreme Court, which will be issued in the case described above (of course, if the cassation complaint is accepted for consideration), will be a breakthrough in the matter of liability of the Church for damages caused by pedophile priests. However, it is worth considering now whether there are grounds in the current legal status for burdening the Church with such responsibility. Resolution of this problem will be significant not only in relation to victims of pedophile priests, as child sexual offenses are not the exclusive domain of the Church. Such crimes can occur in all those places and institutions whose employees enter into special trust relationship with minors (e.g. schools, hospitals, childcare centres, foster families, juvenile halls etc.). The victims may also be adults, who for example are dependent on the perpetrators or have limited defence capabilities due to their personal characteristics (e.g. prisoners, people with physical or intellectual disabilities, patients of hospitals or other types of care facilities). In all these establishments, the problem of the possible liability for the employed or supervised perpetrators may occur. Therefore, the discussion about the legal basis of this responsibility is vital to ensure adequate compensation to victims of sexual offenses.

## II. FOREIGN POLICY

The 'model' example of responsibility of the Church is the United States which is frequently invoked by victims of pedophilia in Poland seeking redress. The legal bases for the responsibility of the Church and church legal persons adopted by American courts are not uniform. In cases in which it turned out that the Church superiors were aware of a sexual abuse going on, and yet they did not react or, even worse, smoothed these acts over and did not inform law enforcement authorities, the church legal persons (usually dioceses) were considered directly at fault. This fault also included broadly defined guilt in the process of selection and supervision of clergy and embraced cases of referring pedophile priests to work with children but in other parishes despite having knowledge of their inclinations (Nesterowicz, 2017).

The responsibility of the Church entities for this type of own guilt was rather widely accepted, however, doubts were related to another basis of responsibility i.e. *vicarious liability*. In the American law, the basis of this responsibility is concluded in the principle of *respondeat superior* (the superior is responsible for the subordinate). The *respondeat superior* principle requires the following elements to be applied: the existence of a relationship between the direct perpetrator of the act and his superior, an agreement between the superior and the subordinate, under which the subordinate performs certain activities with or without remuneration, as well as the supervisor's right to control these activities, regardless of whether this right is actually exercised (Nesterowicz, 2017). As it is rightly pointed out in the doctrine, such liability provides

the possibility of effective search for compensation from an entity that cannot be personally blamed, but which has better financial possibilities to remedy the damage, and is also a factor motivating superiors to take actions to reduce the risk of damage caused by subordinates (Sieczych, 2017).

Responsibility on the basis of *respondeat superior* is not absolute. Before assuming any liability it is necessary to demonstrate that the perpetrator's behaviour which gave rise to the damage arose in connection with the activities performed by the superior on the basis of the agreement referred to above (Sieczych, 2017). This is where the fundamental problem related to the responsibility of the Church for damages caused by pedophile acts arises: sexual abuse of third parties can never be the subject of any legally effective contract or the activities entrusted by the superior, but it happens 'when the opportunity arises' during the performance of actual activities covered by scope of the contract e.g. caring for minors, their education, treatment or spiritual formation. Therefore, it is a form of some 'excessive behaviour' of the perpetrator who, while carrying out the tasks entrusted to him, exceeded their scope and committed offenses that are not related to these activities. Sexual harassment, rape or other form of sexual abuse are never within the scope of church activity, while promotion of faith, pastoral ministry and charity are. Referring priests for work with minors as missionaries, religion teachers, confessors or supervisors of altar boys only makes it easier for these priests to commit such crimes because it creates an opportunity to enter into direct contact with children. However, the superiors of the accused clergymen under no agreement did require them to perform such acts. These acts were committed 'on the margin' of their work. On these grounds the Church has built its negative standing towards the perspective of material liability for damage caused by pedophile priests. The Church directed these priests to perform specific tasks related to broadly understood pastoral activity but the scope of this activity certainly did not include any forms of sexual abuse of minors. There are no grounds for these institutions to be responsible for the consequences of actions of individual perpetrators. According to the Church representatives, the direct perpetrators who acted on their own behalf and for their own pleasure should be liable for any damages caused by their behaviour. Such a claim could have been based on *common law*, according to which the superior was not responsible if the subordinate acted 'for a personal purpose'. However, later, the law began to move away from this viewpoint in favour of a more victim-focused position according to which the superior was responsible if the tort of the subordinate was within the scope of his employment, even if the subordinate's criminal act was impossible to predict (Nesterowicz, 2017).

While assessing the relation of a subordinate's criminal act with the duties entrusted to him under American law, two models are distinguished. In accordance with the first one, a criminal act is related to these duties if it occurred at the place and time of performing these duties, and the perpetrator was at least partly motivated by the desire to fulfil those duties.

Whereas under the second model, the relation of the criminal act with the entrusted duties requires demonstrating that the activity was undertaken in accordance with the principles set by the superior and the perpetrator acted in a predictable and characteristic way for the institution (Sieczych, 2017). M. Nesterowicz notes, however, that although some American courts have adopted the extended concept of the relation referred to above, pointing out that the Church's responsibility on the basis of *respondeat superior* results from the fact that the perpetrators as 'spiritual guides' used their position in the Church to molest minors, in reality in many cases the principle of *respondeat superior* was rejected because the court stated that the pedophile acts of clergy were outside their incardination (calling) and those acts did not fall within the scope of their duties (Nesterowicz, 2017). Thus, the American experience does not necessarily provide the basis for accepting the Church's broad responsibility for damages caused by sexual offenses committed by members of clergy.

### III. POSSIBLE GROUNDS FOR THE RESPONSIBILITY OF CATHOLIC CHURCH IN POLISH LAW

#### A. Responsible entities

When considering the issue of responsibility of Church for damages caused by pedophile priests, first of all potentially responsible entities should be indicated. The contents of article 4 paragraph 1 of the Concordat between the Holy See and the Republic of Poland of 28 July 1993 (Journal of Laws of 1993, No. 51, item 318) shows that the Church itself is a legal entity. However, there are many separate legal entities within the organizational structure of the Catholic Church in Poland. In accordance with the provisions of the Act of 17 May 1989 on relations between the State and the Catholic Church in the Republic of Poland (Journal of Laws of 1989, No. 29, item 154) the structure of the Church includes:

1. The nationwide legal person – the Polish Episcopal Conference;
2. Territorial organizational units of the Church: metropolises, archdioceses, dioceses, apostolic administrations, parishes;
3. Personal organizational units of the Church: the Field Ordinariate, chapters, personal parishes, the Conference of Major Male Religious Superiors, the Conference of Major Female Religious Superiors, religious and secular institutes of consecrated life and associations of apostolic life (these institutes and associations are called orders), provinces of orders, abbeys, independent monasteries, religious houses, higher and lower seminaries, if according to the regulations of the given order they are independent;
4. Catholic universities: the Catholic University of Lublin, the Pontifical University of John Paul II in Krakow, the Pontifical Faculties of Theology in

Poznań, Wrocław and Warsaw (the latter with two sections), the Faculty of Philosophy of the Society of Jesus in Cracow, church scientific and didactic institutes;

5. Other legal persons: rector churches (rectorates), Caritas Polska, diocesan Caritas, Pontifical Mission Societies, as well as other organizational units of the Church, which obtained legal personality in the regulation of the minister competent for denominations and national and ethnic minorities.

The Act also lists the bodies of individual legal persons - e.g. for a diocese it is a diocesan bishop or a diocese administrator, for a parish - a pastor or administrator of a parish, for religious orders - a superior. The indication of these persons is important primarily in the context of the responsibility of church legal persons for own guilt.

It is also worth asking a question about a possible responsibility of the Holy See as a subject of international law. In Poland there are currently no victims who would direct their claims against this entity. Nevertheless, this problem has already been considered by American courts. M. Nesterowicz points to a rather negative position of these courts regarding the possible liability of the Holy See which relied primarily on the immunity of the state in accordance with international law, as well as the fact that although the Pope has theoretical power over all clergy which includes their appointment and control, in practice this authority is delegated to bishops (Nesterowicz M., p. 13-14). However, M. Nesterowicz accepts the recognition of the Holy See's responsibility for the acts of its diplomatic representatives (e.g. Papal Nuncio) (Nesterowicz, 2017).

#### B. Own guilt (article 415 of the Civil Code)

In Polish law, the basis for accepting the Church's responsibility for own guilt is article 415 of the Civil Code. Such responsibility will occur in the event of failure to respond appropriately despite having knowledge of a particular clergyman's pedophilic acts, tolerating these acts or even helping perpetrators to cover them e.g. by transferring perpetrators to other parishes or directing them to foreign missions (Nesterowicz and Głowacka, 2015).

In connection with the above, a very important problem should be raised here which is related to the application with respect to church legal persons the construction of own guilt of a legal person. In accordance with article 416 of the Civil Code, a legal person is obliged to compensate for damage caused by its organ. Such liability occurs only if the damage was caused by a natural person, appointed as the organ's plenipotentiary, acting as an organ and within the competence of that organ (Zelek, 2019). It should be noted that in the light of the provisions of the Act on relations between the State and the Catholic Church in the Republic of Poland, a 'private' clergyman is not an organ of any church legal person. Therefore, in order to be able to attribute responsibility to a specific legal person for the effects of his actions, it would be necessary to prove the guilt of a natural person holding the

function of a body of that legal person e.g. a parish priest, bishop or a senior religious superior. It is these people, in addition to, of course, the direct perpetrator, who must be proven guilty. As the doctrine rightly indicates, the behaviour of a person other than the authority (e.g. proxy) cannot justify attributing liability to a legal person under Article 416 of the Civil Code (Zelek, 2019). Therefore, if no own guilt of the body of the church legal person is proven (e.g. parish priest, bishop), there will be no grounds for accepting the responsibility of that legal person. This important circumstance seems to elude the discussion about the responsibility of the Church for the behaviour of its priests, however, it is worth emphasizing that in the light of the current legal status, the church legal persons are not responsible on the basis of own guilt even for the consequences of a lack of proper response to the identified cases of pedophilia, if these negligence was committed by persons who did not perform the functions of bodies of these legal persons (e.g. a vicar in a parish, other priests or clergymen). Such responsibility will be possible based on the provisions of vicarious liability (e.g. Articles 429 and 430 of the Civil Code), provided, of course, that the prerequisites mentioned in these provisions are met (Zelek, 2019).

The question arises whether the basis of the Church's responsibility may also be article 422 of the Civil Code, concerning assistance in causing damage e.g. in case of keeping pedophile acts of priests from law enforcement agencies. The jurisprudence expresses a view that Article 422 of the Civil Code does not cover a person who has helped to hide damage already caused by the perpetrator, unless that person has assured the perpetrator of the readiness to provide assistance to hide that damage before it was caused it or knowingly took advantage of that damage (See: Supreme Court Judgment of January 23, 2007, reference number III CSK 338/06, *Legalis*). Also in the doctrine it is indicated that the person who helps the perpetrator after the offense has been committed is described as a supporter and his responsibility under article 422 of the Civil Code will occur only if the supporter has knowingly benefited from the caused damage (Zelek, 2019). Thus, the recognition of church legal persons as supporters can be rather problematic because in cases of pedophilia among priests, assistance to perpetrators generally involves sweeping pedophilic acts under the carpet after the crime has already been committed and not providing the perpetrators with support before committing these acts. It is also controversial whether increase in prestige or social advance can be regarded as an example of 'benefiting from the damage done to another person' within the meaning of the above provision (in relation to the Church, it would be, for example, protecting the Church's reputation and avoiding scandal). The doctrine indicates that there is no benefit at the cost of someone else's harm, but only because someone has suffered such damage. These are two separate cases that cannot be mixed together (Kondek, 2019). Thus, it is also rather impossible to base the responsibility of Church on the support principle.

### *C. Fault in selection (article 429 of the Civil Code)*

The basis for the liability of church legal persons may also be fault in selection. According to article 429 of the Civil Code, anyone who entrusts an act to another person is liable for any damage caused by the perpetrator when performing the act unless he was not at fault when choosing that person or he entrusted the act to a person, enterprise or establishment which performs such acts within the scope of its professional activity.

In relation to the Church, guilt occurs in careless selection of candidates for clergy, especially those directed to work with children. An example of such a fault may be failing to check whether a candidate has pedophile tendencies which is particularly important if he is sent to work with children or on foreign missions to distant countries where control over him is limited. (Nesterowicz, 2014) (Głowacka, 2015). The Court of Appeal in Poznań also pointed out the fault in selection in its judgment of 2 October 2018, reference number I ACa 539/18, regarding the Society of Christ Fathers, in which it emphasized that according to expert opinions, the priest-perpetrator had exhibited pedophilic tendencies and behaviour for several years and also exhibited tendencies to anti-social behavior, a lack of respect for higher values and a tendency to subordinate them to his own needs. Therefore, ordaining him and entrusting him with the function of a priest was, according to the Court, a fault in selection. The justification of the judgment cited a fact that during the novitiate period the perpetrator had only one session with a psychologist, which indicated insufficient examination of a candidate for the priesthood in psychological terms.

However, it seems that assuming responsibility under article 429 of the Civil Code does not fully embrace the specificity of church relations. In the doctrine there is a view that this provision establishes responsibility for an independent contractor and therefore a person who is not subject to the management of the entrusting entity and is not obliged to follow his instructions when performing activities i.e. he cannot be the subordinate of the entrusting entity; and according to the minority view, pursuant to article 429 of the Civil Code, it is also possible to be responsible for the subordinate's behaviour in only one case - namely in the event of a relation of subordination between the entrusting entity and the contractor. Article 429 of the Civil Code will be effective only if the contractor will not be at fault for his harmful conduct (Zelek, 2019). Since church relations are usually characterized by the presence of an element of subordination, sometimes very tight e.g. in case of vows of obedience made by clerics, in the light of the above views, the application of article 429 of the Civil Code will not be possible in many cases, unless it is shown that no fault can be attributed to the direct perpetrator due to, for instance, insanity.

### *D. Liability of the supervisor (article 430 of the Civil Code)*

According to article 430 of the Civil Code, anyone who on his own account entrusts an act to a person who while performing the act is under his management and is obliged to follow his instructions, is liable for any damage caused due to a

fault on that person's part when performing the act. As E. Łętowska rightly observes, since priests operate in the organizational structure of the Church and are subject to the hierarchical authority of bishops to whom they owe obedience, their situation has the same characteristics as the situation of 'subordinates' within the meaning of the above provision (Łętowska, 2015).

With regard to the responsibility of the Catholic Church, however, the most controversial issue may arise from the use of the phrase 'while performing the act', which is one of the conditions for liability under article 430 of the Civil Code. A church legal persons may rely on the fact that the damage was done not 'while performing' pastoral activities entrusted to the priest, but the performance of these activities gave rise to an opportunity to abuse because, as already indicated, the scope of incardination of a clergyman never includes sexual abuse of other people.

Such a standing may be supported by views expressed in the doctrine and jurisdiction, according to which actions taken because an opportunity arose and the circumstances were right to offend on one's own behalf and on their own account, are not understood as actions taken 'while performing the act' (Borysiak, 2014). The consequences of adopting such a position can be illustrated by the following example: a supervisor (employer) who hires some subordinates (employees) to carry out renovation works in the client's apartment would only be responsible for damages resulting from the performance of these works contrary to construction standards but would not be liable for damage caused by the employee who capitalised on the opportunity and stole goods from the apartment. Thus, since no one has entrusted the pedophile priest with sexual exploitation of minors but with other tasks which are in line with the mission of the Church (e.g. teaching religion, taking care of altar boys etc.), the effects of a possible 'excession' of the priest i.e. exceeding the limits of entrusted tasks and entering into sexual with children to commit sexual offenses to their detriment would not burden their superior.

However, there are also opinions in the literature emphasizing the unjustification of making a restrictive, narrowing interpretation of the concept of 'while performing the act'. For example, E. Łętowska referring to article 430 of the Civil Code indicates that it is not very important whether a specific harmful act was 'entrusted' (since it is obvious that no one entrusts subordinates with committing a crime) but whether the performance of the entrusted activities was a factor locally and temporarily enabling a typical course of action which resulted in damage being done (Łętowska, 2017). Therefore, according to this author, there is a premise to cause damage as part of 'entrusted activities' when the activities served as a necessary means to cause damage e.g. when the perpetrator exploits the facilities associated with the function performed and violates the trust that has been established thanks to his mission. Therefore, it is sufficient that the work (mission) facilitated the acquisition of opportunities and constituted means to cause damage (Łętowska, 2017). A similar position is

also presented by M. Nesterowicz who indicates that 'the assumption of the responsibility of the Church (diocese) for molesting minors by priests is primarily due to the fact that the perpetrators of sexual abuse – priests, use their position of a public figure with great authority among minors as representatives of God on the Earth. (...). If the perpetrators were not priests, the harassment would not have happened because minors would not have encountered them. The priest's position created opportunities for contact with minors and either encouraged harassment or facilitated it, which was related to the incardination of the priest (Nesterowicz, 2017)'. When such a position becomes widespread in jurisprudence, it will mean that the victims may claim liability from the Church and church legal persons pursuant to article 430 of the Civil Code.

Importantly, a position that broadly understands the notion of damage caused 'while performing the act' was expressed by the already mentioned judgement of the Court of Appeal in Poznań of 2 October 2018 on the Society of Christ Fathers relies on article 430 of the Civil Code in establishing the responsibility of the order and approves of the earlier thesis of the Regional Court, which referred, among others, to the view of M. Nesterowicz presented above. The Court stated that it is impossible to endorse the view that the plaintiff did not suffer damage during the process of performing the activities entrusted to the priest but only because 'an opportunity arose' since it is impossible to assume that the decisive criterion for delimiting these cases is only the fact in whose interests the subordinate was acting. The court pointed to the need for a normal causal relationship between the damage and the behaviour of the priest that falls within the concept of 'performing the tasks entrusted to him'. The court also emphasized that the existence of such a relationship does not exclude actions which are faulty, unlawful, and even oriented towards a personal gain. In the justification to the verdict in support of the thesis about the relation between the offense and the activities entrusted to the perpetrator, it was emphasized that the perpetrator met the plaintiff as a catechist while performing the educational mission of the Order or the wider Church. The defendant hosted the plaintiff at his presbytery where the first criminal acts took place. They went away together (the defendant always wore a cassock or clerical collar) and stayed in one room. However, as the court determines, regardless of whether it was a pilgrimage or a hotel, no one took an interest. Undoubtedly, a situation in which an adult man shares a room with an underage girl should at least arouse interest or concern. The only suggestive explanation for the lack of intervention is that this man was a priest, and therefore a trustworthy person. The court emphasized that liability under article 430 of the Civil Code is based on the principle of risk and neither lack of fault in selection nor the lack of knowledge about the perpetrators offense releases from such liability.

Liability based on article 430 of the Civil Code, however, will not be an absolute responsibility resulting from the mere fact of enabling priests to contact minors. It may be

controversial to hold a superior responsible if harassment does not occur in places where pastoral activity takes place (e.g. sacristy, presbytery, catechetical hall, religious house) and not “on the margin” of performing pastoral activities but when the priest is just a ‘private person’ and, as aptly included in the literature, leads a ‘double life’, and meets minors in his free time and outside the parish e.g. in gay clubs, depots or any other places. In relation to the above, the doctrine indicates that in such cases the priest acts ‘on his own account’ as an ordinary citizen and only he can be liable for damages caused in such conditions (Nesterowicz, 2014) (Głowacka, 2015).

However, one can doubt whether the above position corresponds to the specificity of church relations. At this point, it is a good idea to cite the verdict of the Supreme Court of 25 January 2017 (ref. no II PK 341/15) regarding a sexual harassment case in which it was stated that the employer is not a guardian of the morality of his employees outside the time and place of work or in situations when employees travel abroad on a trip organized by the trade union operated by the employer. Due to the absence of the causal-temporal-local relation with the place of employment, the employer is not responsible for the potential sexual harassment of a participant of such a trip by another participant of this event. However, one of the motives of this decision should be emphasized - the Supreme Court pointed out that ‘since the participants of this trip which took place outside the place and the time of work, were not under authority of the defendant employer, the employer was not a guardian of morality of his ‘vacationed’ employees outside of time and place of work ‘unless otherwise arises from specific employment relations in which employees are required to comply with ethical and moral principles also in the area of private behavior’. Therefore, the question may be asked whether the ‘employment’ relation of a priest is indeed such a ‘special relation’ in which the ‘employee’ (priest) is obliged to comply with ethical and moral principles also in his private sphere?

E. Łętowska indicates that a priest, as a person of public trust who enjoys authority, is like a policeman ‘always on duty’ which would mean that his superior (the Church) bears responsibility for acts performed in a broadly understood relation with this duty, however, she combines this responsibility primarily with the requirement that the victims know who the perpetrator is and therefore have confidence in him because the perpetrator is wearing a religious vestment- a cassock or clerical collar in places other than those related to pastoral activity in order to be more trustworthy (Łętowska, 2017). However, it is difficult to formulate a general conclusion that clerics- perpetrators of sexual offenses always present themselves as priests or use attributes of the clerical state such as a cassock or habit. It is rather unimaginable for a priest to appear in his clerical vestment e.g. in the aforementioned gay club due to the fact that the negative position of the Catholic Church towards the phenomenon of homosexuality is widely known and such a priest would certainly be afraid of recognition and negative impact of such a visit on his

‘professional career’. However, due to the specificity of the clerical state, it is difficult to talk about a priest as a ‘private person’. After all, clerics promise to follow certain moral principles throughout their lives. Even if they commit sexual offenses outside ‘service places’ such as a presbytery or a monastery, this does not diminish the scope of their breach of ethical principles which they pledged allegiance to because their whole life is to be devoted to preaching the Gospel and being a witness of the faith. The next question that needs to be asked here is does the subordination of the priest to his rector, bishop or any other religious superior include supervision over his private life (‘conduct’)? The answer to this question should be sought in the internal law of the Catholic Church e.g. in the Catechism, the Code of Canon Law or the statutes of individual orders, which would exceed the scope of this study. However, one of the premises of vicarious liability mentioned above is worth pointing out. It is the superior's right to control activities entrusted to his subordinates, regardless of whether this right is actually discharged. Therefore, if it is assumed that the relation of subordination connecting a priest with his superior covers all spheres of his life, including ‘private’ life, it is not out of question, depending on the circumstances of the particular case, that superior may be liable pursuant to article 430 of the Civil Code even for the damage caused as a result of acts committed as part of a ‘double life’ of a priest. Notwithstanding the foregoing, superiors may be liable for improper supervision of subordinates as own guilt. The problem of the possible liability of the Church for the priests' deeds committed without any connection to the work they do, is still very controversial and perhaps it will become the subject of jurisprudence.

However, the matter above does not end the issue of the superior's responsibility because in case of the multitude of church legal persons cited in this study, the question about the addressee of the compensation claims seems natural. The doctrine indicates that of the two possible approaches to the relation of authority (over priest) one broader, covering only general organizational subordination, and the other narrower, also including subordination to the advice on how to perform specific activities, the first applies, which means that, for example, in work relationship the function of a superior is not assigned to a direct supervisor (e.g. a foreman) but to the organ of the establishment (Radwański and Olejniczak, 2008). Consequently, the responsibility for damage caused by pedophile priests should not lay on the immediate superior but on the church legal person in whose structure the perpetrator operated. E. Łętowska points out that it is the lowest level church legal person which is liable for the behaviour of priests (e.g. parish) and not the higher levels or the Church as a whole (Łętowska, 2017). It seems that this position is correct, however, one cannot ignore the fact that lower level church legal persons may not possess sufficient property to satisfy the compensation claims which in such cases are usually really high.

Yet another problem may be related to a situation in which the priest is entrusted with tasks related to public functions of

the state or a local government units such as teaching religion in schools or working in hospitals, nursing homes or orphanages. In case of commissioning such tasks by the state or local government units to church legal persons (e.g. running a hospital or an educational care facility by these legal persons) joint and several liability of the commissioning entity pursuant to article 417 paragraph 2 of the Civil Code is possible but in case of, for example, a school catechist or a hospital chaplain (who are not legal persons but only perform pastoral services for public entities) the situation is more complicated.

For example, in accordance with paragraph 4 of the Regulation of the Minister of National Education of 14 April 1992 on the conditions and methods of organizing religious education in public schools (Journal of Laws of 1992, No. 36, item 155) a school may employ a teacher of religion only on the basis of a written referral to a given school which in case of the Catholic Church is written by a competent diocesan bishop which is, by the way, in line with article 12 paragraph 3 of the Concordat, according to which teachers of religion must have authorization (*missio canonica*) from the diocesan bishop. The doctrine indicates that the prerequisite for obtaining a canonical mission is a manifestation of the influence of the Church on the filling the vacancies for religious instructors and the mission can be obtained only by those who have adequate qualifications regarding education and morality (Janiga and Mezglewski 2001). However, as regards the employment relation, catechists like other teachers, are subject to the provisions of the Act of 26 January 1982 – the Teachers' Charter (Journal of Laws of 1982, No. 3, item 19, as amended) article 7 item 1 of which states that the headmaster is the superior of all school employees (Janiga and Mezglewski). On the other hand, as regards hospital chaplains, the law does not specify the form of establishing employment relation with a priest. Article 17 paragraph 3 of the Concordat only generally indicates that the diocesan bishop will select chaplains with whom the relevant institution will conclude an appropriate agreement, but the lack of specification whether it is an agreement in the colloquial sense as an agreement concluded by the therapeutic entity with a religious community on the organizational issues of pastoral work, or whether it is an employment contract or non-employment contract (e.g. Civil Law Contract) (Ozóg, 2018).

Both the school catechist and the hospital chaplain have one 'common denominator' i.e. two entities that can be considered as their superiors within the meaning of article 430 of the Civil Code - a school or a hospital and a church superior because even a priest who has an employment relation with a school or a hospital is not, after all, released from subordination to the bishop or a religious superior. The consequence of the above may be difficulties in determining the addressee of claims under article 430 of the Civil Code who is liable for any damage caused by a pedophile priest. As far as schools are concerned, article 120 of the Civil Code is applied, according to which the employer (school) is solely responsible for the damage caused by the employee (which, moreover, allows the Church to shrink from responsibility). In case of hospitals the

situation is not so straightforward because when employing a chaplain under a civil law contract or e.g. on a voluntary basis, it is difficult to consider a hospital as a 'superior' of the chaplain in the meaning of article 430 of the Civil Code (at most, there may be liability under article 429 of the Civil Code, although the chaplain is in fact chosen by the bishop, and the hospital's influence on this decision may be rather limited). For those affected, this state of affairs is unfavourable and the construction of joint and several liability still remains to be considered pursuant to article 441 of the Civil Code.

#### IV. CONCLUSIONS

Summing up the considerations it should be stated that in the current legal framework there are grounds for charging the Church and church legal persons with responsibility for damages caused as a result of sexual abuse of minors by priests. The most adequate legal grounds for such liability will be article 430 of the Civil Code that regards the responsibility of the superior, and article 415 of the Civil Code that establishes liability on the basis of own-guilt relating to cases of concealing pedophile offenses or assisting perpetrators in avoiding liability. However, the Church's responsibility involves a number of legal problems, of which only some could be presented in this study due to its limited framework. However, there is no doubt that the victims encouraged by examples from abroad will start to come out in bigger numbers and pursue their claims which means that perhaps a more uniform jurisdiction will be created for these cases.

#### *Conflict of interest*

The author declares no conflict of interest.

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