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Ecclesiastical penance on polish lands in the secular law system (problem outline)

Abstract

The Church's internal organisation, system and development of canon law produced a number of institutions of their own. These allowed for the religious purpose and ethos of its members' lives and church discipline. Along with religious freedom for Christians, there was a process of infiltration of state and church values. Ecclesiastical penance functioning initially only within the ecclesiastical legal order began to infiltrate the state system. In the territory of the First Republic it was present in land, urban and rural law. The reception of canon law into the state legal order continued to spread during the partition period. The absence in the Code of Major and Corrective Penalties of the Kingdom of Poland of a definition of what ecclesiastical penance was resulted in the possibility of imposing all forms of penance established in the ecclesiastical canons of the Council of Trent. As a result, public penance was practised until the 20th century under the term ecclesiastical penance. However, it was condemned only to adherents of Christian religions for certain acts prohibited by criminal law.

Keywords: ecclesiastical penance, public penance, canon law, criminal law, religious law.

Introduction

In Christianity, penance is an attitude expressing sorrow for one's sins, repentance and a desire to make amends and to strive to restore the unity of man with God and the ecclesial community that has been broken by sin. It can take an internal form, as a disposition or moral fitness in the form of spiritual pain because of an evil act committed and at the same time an offence against God. Penance in its external form, on the other hand, expresses itself through physical mortification undertaken to propitiate God or man[1].

[1] E. Kasjaniuk, *Pokuta,* in *Encyklopedia Kościelna*, ed. E. Gigilewicz, Lublin 2011, vol. 15, col. 1037; S. Jankowski, *Pokuta w Biblii*, Ibidem, col. 1037-1038; J. Misiurek, *Pokuta w katolicyzmie*, Ibi-

The Church, as a community of baptised persons, draws the awareness of penance from biblical inspiration. Personal penance is therefore present in the Church's Tradition and has the significance above all of moral purification. The believer undertakes it on his or her own initiative. Alongside it, penance marked by a bishop or priest within the hierarchical system of the Church should be mentioned. It takes the form of sacramental penance or canonical penances. The former is aimed at making reparation to God and kindred human being. Canonical penances, on the other hand, aim to make reparation to the community[2]. They can occur in private or public form. Public penance was constituted in the Catholic Church, as confirmed by the Council of Trent, for public sins that arouse scandal[3]. It could take the ordinary form or the solemn form, when it was imposed by the bishop and according to his own liturgical form[4].

In history, canonical penance, although it concerns the strictly religious and moral sphere, does not remain only a concept of canon law. After Poland was baptized, it became an institution also present on Polish soil, first in the ecclesiastical, and then also in the secular legal order. This led to the reception of penance, which resulted in the presence of the concept of ecclesiastical penance in the legal system of the First Polish Republic. The research task undertaken in this article will be to present a catalog of people subject to ecclesiastical penance throughout history and to obtain new knowledge about the forms of ecclesiastical penance during the partition period.

There is a belief that after the partitions of Poland, public penance was no longer practiced. This is indicated, among others, by: no publications on this topic. Meanwhile, the provisions on ecclesiastical penance applicable in secular law in the Kingdom of Poland could constitute the basis for marking its public form for Christians until the beginning of the 20th century.

1. The origins of ecclesiastical penance in Christianity

1.1. Penance in the sense of moral purification

Christians (the Church) in apostolic times was a community that based its religious and moral life on radicalism. Despite the formal ban on Christianity in

dem, col. 1039; J. Bakalarz, *Posoborowa reforma kościelnej dyscypliny pokutnej*, „Church and Law" 1981, no. 1, pp. 88–92.

[2] F. Ciepły, *Chrześcijańska koncepcja kary kryminalnej a współczesne poglądy na* karę, Lublin 2010, p. 84.

[3] E. Masłowska, *Grzech i pokuta – etos sprawiedliwości w ludowym kodeksie moralnym*, in *Tradycja dla współczesności. Ciągłość i zmiana*, Lublin 2015, vol. 8: *Wartości w języku i kulturze*, pp. 273-274.

[4] Cf. Corpus Iuris Canonici editio lipsensis secunda post Eamilii Ludouici Richteri, pars secunda Decretalium Collectiones, Graz 1959, Liber V, tit. XXXVIII *De penitentiis et remissionibus,* p. 884-889; H.K. *Pokuta*, in *Encyklopedia Kościelna,* ed. M. Nowodworski, 1884, vol. XX, p. 217.

the Roman Empire, people exercised the elementary individual right to religious freedom, in secret. However, the problem was not just a legal one in the circulation of the secular legal order. If one wanted to remain a Christian and belong to Christ, one should not sin. One had to live an exemplary life according to the evangelical precepts. If a believer committed a sin, he or she was aware that he or she was jeopardising his or her future concerning the reward of eternal life. He or she was not worthy and thus did not join the Eucharist – Communion with Christ. For the believer, this was a tragedy. This was all the more so because the current of the rigorists and Novatians listed the irrecusable sins (idolatry, fornication, adultery, apostasy)[5] . The bishop overseeing the religious life of the community could apply the punishment of a curse-exclusion from the Church for a life incompatible with the Gospel, which would place the sinner outside the community of believers and consequently close the way to salvation. A Christian who had sinned gravely therefore sought on his own initiative to find a way out of the situation and avoid excommunication. In order to be "rehabilitated" in the eyes of God, one had to purify oneself before Him, that is, to satisfy God's justice, but it was also necessary to purify one's own heart (interior). The remedy for this condition was penance, as the Scriptures and the Fathers of the Church taught[6] . It was a chance-grace which the sinner could only benefit from in the present life, since the time for improvement was only on Earth[7] . According to Christian doctrine of the time, penance was urged by the imminent second coming of Christ. At that time, penance was exclusively public. A Christian who had committed a sin would come to the bishop after the penitential practices confessed his guilt (usually in an open manner to the community) and public absolution followed[8].

1.2. Canonical penance – from the 3rd century onwards

This process of exercising penance as God's grace and moral purification at the initiative of the sinner gradually evolved. From the second/third century onwards, when a distinction was made between grave sins (murder, perjury, adultery) and light sins, the form of penance also changed. For grave sins, public penance had to be done, while light sins were dealt with by personal penitential deeds such as almsgiving, prayer and fasting. According to the Church Fathers, grave sins separated one from the community of the Church. The means of re-

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[5] K. Keler, *Praktyka pokuty i pojednania w świetle ewolucji historycznej*, "Homo Dei" 1984, no. 53, p. 108 n.

[6] R. Andrzejewski*, Pokuta w nauczaniu Ojców Kościoła*, "Ateneum Kapłańskie" 1970, vol. 89, no. 2, passim.

[7] *Tak zwany Drugi List Klemensa Rzymskiego*, in *Antologia literatury patrystycznej*, ed. by M. Michalski, Warsaw 1975, vol. 1, pp. 77-79.

[8] A. Młotek, *Pokuta i pojednanie w Kościele pierwotnym*, "Colloquium Salutis. Wrocław Theological Studies" 1985, vol. 17, p. 169.

turn was penance. This one, however, could only take place once in a lifetime. Hence, penance was called a second baptism – for it allowed one to become a full member of the Church again. However, there was only one chance to do penance in life. This principle was popularised in the Church by Hermas around 150 and by Tertullian[9].

The ancient local synods, episcopal law and the Apostolic Constitutions[10] spoke on the ecclesiastical discipline of the time. From the fourth century onwards, the initiative to undertake penance passed from the sinner to the bishop. It was the bishop who imposed penance, even against the will of the sinner, e.g. when the sinner was condemned by a secular or ecclesiastical court sentence. Penance thus took on a legal character. It becomes a quasi-punishment ordered by the bishop on the sinner if the sinner wishes to free himself from the curse. However, it is only valid in the ecclesiastical legal order and is not practised in secular legal transactions. It is therefore a canonical penance. It still has a public character. It was performed in front of the entire Christian community in the belief that it could only take place once in a Christian's life – *paenitentia una est*. Penance continued to take the form of the public rite known in apostolic times, although the practice of confessing individual sins in front of the whole community was increasingly abandoned and a form of *sub secreto* became more common. The penance of the time consisted in stigmatising the sinner as the perpetrator of evil. It was therefore long-lasting and characterised by rigour. Among other things, it consisted of limiting clothing to a hairpiece and allowed travel only on foot. The practice of fasts and a strict lifestyle often combined with self-flagellation and even long-term exile. Over time, exile was replaced by pilgrimage.

The uniqueness of penance meant that it was postponed until later in life, sometimes for a moment just before death. This influenced the disappearance of public penance. Indeed, from the seventh century onwards, the period of individual confession (private penance) combined with spiritual direction first before an abbot or monk, then a priest, began. Public penance, on the other hand, was only revived under the influence of the Carolingian reform (8th-9th century)[11]. It was inflicted for grave overt sins, while tariff penance was used for grave hidden sins. Absolution was also given immediately after confession of guilt and after instruction[12] . Henceforth, public penance was to be spoken of as a ceremony. Reconciliation took place, for example: on the Easter Vigil or on Maundy Thursday. From the 12th century onwards, the ritual of penance was

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[9] S. Czerwik, *Praktyka pokutna w Kościele poprzez wieki*, „Ateneum Kapłańskie"1977, vol. 89, no. 2, pp. 160–164.

[10] A. Młotek, op. cit., p. 172.

[11] P. Matwiejczuk, *Pokuta kościelna w świetle penitencjałów z terenów Francji i Italii z VIII i IX wieku*, [in:] *Karolińscy pokutnicy i polskie średniowieczne czarownice*, Fasciculi Historici Novi, ed. M. Koczerska, Warsaw 2007, vol. VII, pp. 9–89, passim.

[12] B. Nadolski, *Liturgika,* vol. III: *Sakramenty, sakramentalia, błogosławieństwa,* Poznań 1992, pp. 98–99.

based on regulations describing this rite in a ceremonial form. It was therefore performed according to the provisions of synodal statutes and pontifices. The penitent dressed in a hairpiece was symbolically excluded from the community of the faithful. During Lent, his participation in services was restricted, e.g.: he stood outside the doors of the temple without being allowed to enter. His sinful status was emphasised by his outward appearance, e.g.: bare feet, rods in his hands. He became a member of the Church again from one of the days of the *Triduum sacrum* through an act of public reconciliation[13].

In the Polish lands, public reconciliation of sinners is certainly known as early as the following century[14] . From the 15th century onwards, synodal canon law distinguished between public penance and private penance. The former was imposed on those guilty of a public offence. Its purpose was to make reparation for public transgressions and crimes. It could take the form of a solemn penance according to liturgical regulations and the principle of *poenitentia una est,* or an ordinary one without the sanction of this norm. On the other hand, for private penance ensuring a high degree of discretion for the sinner, all Catholics were obliged through the requirement of annual confession since the Fourth Lateran Council (1215)[15] . Indeed, with the Tridentine Reform (1545-1563), the judicial function of the confessor and the tribunal of penance became widespread[16].

Penitential discipline and forms of penance were initially only valid in the ecclesiastical, and therefore canonical, legal order. However, the penance that Christians did was never confined to a vacuum or a geographical enclave. It was a religious institution spreading with Christianity throughout the world. Let us therefore trace what was the impact of the penance brought by Christianity on the legal system of the Republic.

2. Ecclesiastical penance in the secular legal order of the First Republic

2.1. Ecclesiastical powers of rulers

There is no doubt that the competence to impose penance was the property of the clergy: the bishops and, by their mandate, also the priests. However, from the earliest Christian emperors onwards, other European rulers were also characterised by a tendency to equate the secular legal order with the ecclesiastical order, ascrib-

[13] P. Kras, *Pokuta publiczna heretyków. Formy i funkcje, „*Annals of Arts" 2011, vol. LIX, no. 2, pp. 8-12.

[14] B. Poschmann, *Die abendländische Kirchenbusse im früheren Mittelalter,* Breslau 1930, p. 6; B. Ulanowski, *O pokucie publicznej w Polsce,* Kraków 1888, p. 148.

[15] W. Urban, *Z dziejów duszpasterstwa pokutnego w diecezji wrocławskiej do końca XVIII wieku*, „Canon Law" 7 1964, vol. 7, no. 1–2, pp. 203–210.

[16] A. Młotek, op. cit. p. 179.

ing to themselves powers in both systems and, by virtue of their supremacy over the Church, usurping the powers of the priesthood (*rex et sacerdos*). For they considered themselves responsible not only for the morals but also for the religiousness of their subjects according to the principle of legalism *nulla potestas nisi a Deo*[17] . This was also the case in the Polish Republic, where, from the time of Bolesław Chrobry until the 12th century, state synods were held, at which secular and ecclesiastical laws were established[18] . This allowed rulers to adapt canonical institutions to enact their own laws. This is also how penance was introduced, which began to function in the legal system instead of or alongside secular punishments[19] . Because it was performed in the church or for the benefit of the church, although it was intended to humiliate the offender, it was called ecclesiastical penance. The consequence of the reception of this institution of canon law into the secular law system was its presence in the land, urban and rural law of the First Republic.

2.2. Ecclesiastical penance in land, village and town law

In communities with a family-tribal system, the murder of a family member demanded punishment in the form of bloody revenge. This was of an immediate nature. The members of the family were obliged to avenge the death or mutilation of a member of their community, or other harm done to property. This gave rise to feuds and even family fights called ancestral revenge and a closed circle of constant retaliation[20] . This is because with revenge there were fights and more victims. Revenge was thus reduced over time to retaliation, taking the form of talion[21]. With the change of regime and the formation of the foundations of the monarchy, it became apparent that these internal struggles had the effect of weakening the state and shattering public order. The monarch therefore sought to influence the restriction of this right.

In succour of these efforts came Christianity with its moral law. Namely, the idea of love of God and neighbour, and in the name of this, the dissemination of canon law and the promotion of its institutions, including public penance, but already in the canonical sense (as a means of discipline and quasi-punishment) and related acts such as confession and reparation. The effect of this was to obtain forgiveness.

The employment of clergy in the chancellery and courts of Polish rulers and the establishment of church administration in the Polish lands influenced the

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17 H. Misztal, *Polskie prawo wyznaniowe*, Lublin 1996, pp. 63–64.

18 B. Ulanowski, *O pokucie publicznej w Polsce*, Kraków 1888, pp. 70–76.

19 R. Kotecki, *Aeternum Dei servitum ad sanctum locum. Pokuta zabójców pięciu Braci Męczenników w relacji Brunona z Kwerfurtu*, „Historical Quarterly" 2014, vol. 121, no. 1, pp. 58–61.

20 A. Pawiński, *O pojednaniu w zabójstwie według dawnego prawa polskiego*, Warsaw 1884, pp. 14–23.

21 J. Krukowski, *Kary kościelne w ogólności*, in *Commentary to the 1983 Code of Canon Law*, ed. W. Wójcik, J. Krukowski, F. Lempa, Lublin 1987, pp. 154–155.

spread of penance. The institution of public penance therefore influenced the perception of bloody revenge rooted in the law of the land and changed mentalities. This allowed rulers to introduce a law requiring the announcement of retaliation (from the mid-14th century), then limiting it to the circle of the closest relatives, and finally to the perpetrator himself. It was also time-barred from 1421 after 20 years. It was finally banned in the 16th century. It probably succeeded owing to, among other things, the influence of Christianity. For in parallel with these restrictions, the so-called composition, or settlement[22] , became widespread.

However, for the law to be effective and to be respected, prohibition was not enough. The society of the mighty landowners had to be convinced. The Church's influence on the law of bloody vengeance was a process that reached many Christian countries, including Hungary and Czech Republic, influencing, among other things, the so-called humility, which was a custom present in tribal societies of various cultures and dated back to pre-Christian times[23] . In medieval Poland, humility evolved under the clear influence of Christianity. Its presence in terrestrial law reflects the phenomenon of the penetration of the idea of public penance into it, and it was one that resembled solemn public penance. This was the period of the widely used law of bloody vengeance[24].

Humility was – a legal form of so-called composition – a social contract. It was not negotiated by the guilty party. The contract was negotiated by intermediaries – peacemakers. The place of communication was often an ecclesiastical space: church, monastery or cemetery, and the term – holy day[25] . A clergyman could also be expected to be present among these peacemakers. The composition placed the manslayer in a similar position to that assigned to the culprit in an act of public penance. He had to make reparation to those who were offended – the family and relatives of the murdered person. Out of justice, sums had to be set aside to cover funeral expenses, to support the family of the deceased, to pay the so-called wergeld, but not only. So that the family was not accused of materialism, the moral element was also important. The murderer had to humble himself and admit his guilt by regretting the deed and asking for forgiveness. This act was reminiscent of humility. These ceremonies took the form of a ceremony in which the culprit went barefoot in a procession of 12 people to the victims of a manhunt. He confessed his guilt before them[26] . It was like his confession to the witnesses. He also wore an instrument of punishment, such as a sword, and in a kneeling posture asked the victims for forgiveness. The relative would then lift it from the ground as a sign of forgiveness, which resem-

[22] Ibidem

[23] Cf. A. Pawinski, op. cit., pp. 27, 43.

[24] B. Ulanowski, op. cit., p. 4.

[25] Cf. A. Pawinski, op. cit., p. 48; R. Kotecki, op. cit. pp. 45–46.

[26] T. Maciejewski, *Historia ustroju i prawa sądowego Polski*, Warsaw 1999, p. 164.

bled a public solemn penance. Alongside this secular penance, an element of reparation to the Church community was thus introduced, analogous to public penance in the form of, for example: the offering of wax or the ordering of Mass for the deceased. In some regions, such as Lower Silesia, the murderer was expected to erect a penitential cross or chapel as a sign of the settlement[27] . When bloody revenge was banned in the 16th century, the penance known to the law of the land disappeared with it, and this was gradually transformed into ordinary public penance without losing its penal character[28] .

The nobility tried to free themselves from the humiliating form of public penance. Even in the ecclesiastical courts they avoided public penance by using monetary redemption. In the land courts, on the other hand, the widespread disagreement of the lords with the adjudication of ecclesiastical penance led to its disappearance in land law.

However, the history of the law concerning the form of penance imposed by the secular judiciary on peasants and burghers was different. Ordinary (non-solemn) public penance, despite being a religious measure, passed into the secular punishment system without changing its nature. This was due to the principle of the link between the State and the Church[29]. Hence, in legal literature it is perceived as a common punishment in honour[30] . Its use, until the end of the First Republic, was confirmed by the urban and rural laws in force using the concept of ecclesiastical penance. In rural law it was mainly adjudicated for offences that were expressed in the Decalogue, e.g.: adultery, theft, abuse against parents. On the other hand, the public forms of ecclesiastical penance used in rural law included: standing in a pillory or standing in a church. Sometimes it was the main punishment and at other times an additional punishment. There was no general rule. Alternatively, such a rule could be found in the categories of individual offences. Penance could also be an optional punishment depending on the type of offence[31] . For similar offences, ecclesiastical penance, which was widespread in municipal law, took the form of public non-solemn penance. In the 18th century, it only disappeared in the larger cities. In towns, it was continuously practised until the partitions. It consisted, for example, of holding a cross or lying cross-legged in church for 5 weeks, it could involve kneeling in a death shirt at Mass and standing in it during a sermon[32].

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[27] J. Warylewski, *Krzyże i kapliczki pokutne* (*pojednania*)*, jako element średniowiecznej jurysdykcji karnej*, „Studia Gdańskie" 2016, vol. XXXVIII, p. 152.

[28] Cf. A. Pawinski, op. cit., pp. 44-45.

[29] J. Dicker, *Pokuta kościelna w prawie wiejskim polskiem, od XVI do XVIII wieku*, Lwów 1925, p. 15.

[30] Cf. T. Maciejewski, op. cit., p. 290.

[31] J. Dicker, op. cit., pp. 16–18.

[32] M. Mikołajczyk, *Przestępstwo i kara w prawie miast Polski południowej XVI–XVIII wieku,* Katowice 1998, pp. 226–227; R. Krajewski, *Prawa i obowiązki seksualne małżonków*. *Studium prawne nad normą i patologią zachowań*, Warsaw 2009, p. 89. M. Mikołajczyk, *Proces krymi-*

3. Ecclesiastical penance in the law of the Kingdom of Poland

The concept of ecclesiastical penance, after the collapse of the independence of the Republic, was used since 1 January 1847 in the territory of the Kingdom of Poland by the Code of Major and Corrective Penalties[33] and the preceding Transitory Law[34]. However, no provision defined it. Only in Article 637 can we find an argumentation of expediency, which says that it was introduced for "purification of conscience". However, it could only be adjudicated against the adherents of those Christian communities which were legally operating on the territory of the Kingdom of Poland[35]. It also had to be imposed by ecclesiastical authorities, albeit on the basis of a secular court ruling.

The adoption of the criterion of religion for the imposition of ecclesiastical penance in the criminal law of the Kingdom of Poland certainly violated the principle of equality before the law. Based on the theological concept according to which human conduct has a temporal and supernatural dimension, it nevertheless expressed the policy of linking the state and the Church[36] . In doing so, the doctrine favouring the thesis of the supremacy of the state giving it the guarantee of supremacy was gaining importance. It was therefore emphasised that it was the Church that was in the State and not the other way round[37]. Ecclesiastical penance by the establishment of the state, was therefore subject to baptised persons, not only for strictly religious offences[38]. Penalised acts under the provisions of the Code of Major and Corrective Penalties included, among others, disruption of worship services; insulting feelings, persons and objects of worship; or changing one's religion from the Orthodox Church to another; but also incest, bigamy, adultery, homosexual acts, zoophilia; physical violence against one's spouse or parents; manslaughter; aggravated battery; negligence in the manufacture of foodstuffs; selling poisonous and life-threatening substances without a permit; and medical and pharmacy malpractice[39].

Thus, since the legislator of the Kingdom of Poland did not define what ecclesiastical penance was, but commissioned it to be imposed by the clerical au-

nalny w miastach Małopolski XVI – XVIII wieku, Katowice 2013, p. 559; M. Delimata-Proch, *Cudzołóstwo w praktyce prawa miejskiego Rzeczypospolitej na przykładzie "Księga czarnej złoczyńców sądu kryminalnego w Wiśniczu"* (*koniec XVII–XVIII wieku*), "Journal of Law and History" 2017, vol. 69, z. 1, pp. 187–188.

33 Code of Major and Corrective Penalties, Warsaw 1847, pp. 476, hereafter: KKGiP.

34 Journal of Laws of the Kingdom of Poland (hereinafter: DzPKP) 1847, vol. 40, no. 123, pp. 7–111.

35 Note to Article 62 KKGiP.

36 F. Ciepły, op. cit. pp. 63–66.

37 A. Barańska, *Między Warszawą, Petersburgiem i Rzymem. Kościół a Państwo w dobie Królestwa Polskiego,* Lublin 2008, pp. 269–270.

38 P. Ludwiczak, *Prawo karne Królestwa Polskiego w latach 1815−1905 a sprawowanie kultu religijnego*, "Journal of Law and History" 2018, vol. 70, no. 1, p. 229.

39 Art. 942 KKGiP

thority, he had to reckon with the fact that it would be legislated on the basis of the custom and internal law of the Christian Churches. Thus, by way of reception, state law took over confessional penance giving it the character of a secular legal institution[40] . This was tantamount to the authorities of the Catholic Church designating public non-confessional penance, i.e. ordinary penance, for overt offences giving rise to scandal.

Summary

In the Church, as a Christian community, penance has been present since its inception. As a result of the reception of canon law, together with its other institutions, it permeated the secular law system. In the Polish lands it was present in the canonical and secular legal order from the Middle Ages, and in the land law it influenced the shape of the so-called penance. The legislation of the Council of Trent confirmed three forms of canonical penance. At the same time, solemn public penance, which could take place only once in a Christian's life and which was performed according to a special rite, was no longer used in post-Tridentine church practice. Ordinary public penance was practised in the Church for overt sins, including those that aroused public scandal and violated accepted community morals. The latter was also adapted to the urban and rural law of the First Republic. Penance could also be private, as inflicted by the priest in the confessional, and thus was present only within the church community.

From 1847, a Code of Major and Correctional Penalties was introduced in the area of the Kingdom of Poland, established in 1815. For transgressing some of its provisions, professing Christians were subject to ecclesiastical penance. The legislator of the time did not define this concept. Thus, he did not specify the form of penance. On this basis, it can be assumed that ecclesiastical penance should be understood as public non-solemn, i.e. ordinary, penance acquired from canon law. For according to Tridentine teaching and practice, public penance had to be inflicted for grave and public sins, and therefore not covered only by the secrecy of confession. However, this did not exclude the designation of sacramental penance as well. The thesis of the designation of public penance is supported by those provisions of the Code of Major and Corrective Penalties which explicitly state that the infliction of ecclesiastical penance by the judgment of a secular court is the competence of the ecclesiastical authority (the bishop or his consistory). Thus, none of its articles adjudicating ecclesiastical penance spoke even generally of priests having the authority to impose private penance (*sub secreto*) within the sacrament of penance.

[40] On reception, cf. A. Mezglewski, A. Tunia, *Wyznaniowa forma zawarcia małżeństwa*, Warsaw 2007, p. 3; A. Tunia, *Recepcja prawa wewnętrznego związków wyznaniowych w prawie polskim*, Lublin 2015, pp. 121–122.

Finally, while in the times of the First Polish Republic, ecclesiastical penance was imposed primarily based on the criterion of social status, in the period of the Kingdom of Poland, all defendants of the Christian faith were subject to it, regardless of their social status.

In conclusion, it should be assumed that on the territory of the Kingdom of Poland, secular law sanctioned inequality before the law by pronouncing church penance only for Christians. At the same time, the application of the provisions of this law, in practice, could result in its imposition in a public form. Thus, the provisions of the Code of Major and Corrective Penalties on ecclesiastical penance did not protect individuals from the practice of imposing public penance. Indeed, the criminal law of the Kingdom of Poland permitted public humiliation of the offender.

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Pokuta kościelna na ziemiach polskich w systemie prawa świeckiego

Streszczenie

Wewnętrzna organizacja, ustrój i rozwój prawa kanonicznego w Kościele wytworzyły szereg własnych instytucji. Pozwoliły one na realizację celu religijnego i etosu życia jego członków oraz dyscypliny kościelnej. Wraz z wolnością religijną dla chrześcijan, nastąpił proces infiltracji wartości państwowych i kościelnych. Pokuta kościelna funkcjonująca początkowo tylko w ramach kościelnego porządku prawnego zaczęła przenikać do systemu państwowego. Na obszarze I Rzeczypospolitej była obecna w prawie ziemskim, miejskim i wiejskim. W okresie zaborów nadal upowszechniała się recepcja prawa kanonicznego w państwowym porządku prawnym. Brak w Kodeksie Kar Głównych i Poprawczych Królestwa Polskiego dookreślenia, czym jest pokuta kościelna skutkował możliwością nakładania wszystkich form pokuty ustanowionych w kościelnych kanonach soboru trydenckiego. W efekcie pokuta publiczna była praktykowana do wieku XX pod pojęciem pokuty kościelnej. Skazywaną na nią jednak tylko wyznawców religii chrześcijańskich za niektóre czyny zabronione prawem karnym.

Słowa kluczowe: pokuta kościelna, pokuta publiczna, prawo kanoniczne, prawo karne, prawo wyznaniowe.