Thesis of the PhD dissertation

POSSIBLE ALTERNATIVES OF THE EASTERN CANON LAW TO REFORM THE LATIN PENAL LAW

Noémi Xénia Sereghy

Supervisor: Dr. Péter Szabó

PÁZMÁNY PÉTER CATHOLIC UNIVERSITY

School of Canon Law

Budapest

2023

Content

1.Topic and Objective

In recent years, due to the punishable acts committed by certain clerics, canonical penal law has received more and more attention. Mostly, the penal law of the Latin Church came into focus. During the library research, it was noticeable that several studies have already been published in which the author compares Latin and Eastern penal law, but there are significantly fewer publications that specifically deal with Eastern penal law and its specific characteristics.

Carl Gerold Fürst, an expert on Eastern canon law, whose ideas were strongly enforced in penal law during the codification of the Eastern Codex, put it this way shortly after the entry into force of the CCEO:

„The importance of the CCEO goes far beyond the Code of Canona of the Eastern Catholic Churches. Although the CCEO essentially applies only to the Eastern Catholic Churches; however, with regard to some norms (including a punishable act), it also specifically applies to the Latin Church, so the CIC/1983 is sometimes supplemented by the CCEO, but sometimes also corrected. [....] The CCEO shows very clearly that within the Catholic Church, within not very narrow limits, there is the possibility of quite different legal (and theological) solutions to the same problem, ratified by the same legislator. [....] Only in the future will it be possible to say whether the CCEO, as a "Catholic alternative", will have a concrete effect on the future development of Latin canon law, and to what extent."[1]

It is undeniable that when different rites live side by side, they unintentionally influence each other. It is worth paying attention to these differences arising from different traditions (Latin and Eastern), as they can help us in bringing us closer to solving a possible problem.

At the choice of this topic also played a role in the fact that no monograph has yet been published in Hungarian that deals in more depth with Eastern penal law. In addition, the thesis can also serve as a starting point for further research on the topic, and it is hoped that it will stimulate the publication of new studies in Hungarian.

Three decades after the publication of the Eastern Codex, the time has come when we can get an answer to Fürst's previous assumption in practice, i.e. whether the Eastern penal discipline really had an effect and was able to offer alternatives for the revision of the Latin penal law? To what extent did the solutions of Eastern law appear in the new Latin penal discipline?

[1] FÜRST, C. G., *Katholisch ist nicht gleich lateinisch. Der gemeinsame Kirchenrechtkodex für die katholische Ostkirchen*, in *Herder-Korrespondenz* 45 (1991) 139-140.

Having considered these, I set the following goals when writing this dissertation, I am looking for answers to the following questions:

1. What are the specific features of Eastern penal law?
2. What are the typical features of Latin penal discipline, and what kind of development did it go through?
3. What role can Eastern penal discipline play in the renewal of Latin penal law, and which possible solutions, that can be read from Eastern law has appeared in the new Latin penal law?

2.Sources and methods of the thesis

The thesis describes the specific features and development of Eastern and Latin penal law through the analysis of the previous and currently effective penal law part of the code of Latin and Eastern Catholic churches and the Holy See documents related to penal discipline.
I present the two legal systems using the method of comparative analysis. This method consists of creating parallels with other test objects in whole or in part, analyzing them in order to find and notice the relationship between them, examining their similarities and differences. The parallel study and comparative analysis of the two ecclesiastical codes in force (CIC, CCEO) is essential for the development of the science of canon law. The canonical comparison promotes a better understanding of the existing law and provides assistance in the possible renewal. The data obtained from the examination of the individual canons, their historical sources and the theological-cultural context allow us to understand better the differences and it can provide a good starting point for proposals for amendments, thereby promoting the improvement of the legal system.[2]

3. The structure of the thesis

In the introductory part, after a brief description of the deficiencies the effectiveness of the penal law and the description of the comparative methodology, the dissertation is divided into three larger units. The first part deals with the characteristics of the penal discipline of the

[2] SZABÓ P., *Alcune osservazioni sul diritto sacramentale comparato in prospettiva storica*, in *Eastern Theological Journal* 5 (2019) n. 2. 157.

Eastern Catholic Churches. In the first subchapter, after defining the concepts of sin and the delict, the purposes of penal law and punishment in civil law and in the Church are presented. The second subchapter provides an insight into the codification of Eastern penal law, with the help of which it becomes more understandable why there are significant differences between Latin and Eastern penal discipline. The following subchapter highlights the peculiarities of Eastern criminal law, highlighting the curative nature of punishments, which Eastern law places great emphasis on and whose basis is rooted in a scriptural text (2 Tim 4,2) and canon 102 of the Council of Trullos (692). In the thesis, I will discuss the topic of automatic (*latae sententiae*) punishments in more detail. In this case, a brief historical review seemed necessary, in order to better understand why this type of punishment was eliminated from the current Eastern law code. After that, I examine the realization of the principle of legality - *nullum crimen nulla poena sine praevia lege poenali* - in the canonical penal law, paying special attention to the lack of a norm corresponding to the "general rule" of the Latin code (can. 1399) in the Eastern codex. In the fourth subchapter, I present the differences between the penal discipline of the CIC/1983 and CCEO in the area of substantive and procedural law.

The second unit details the specific features and development of Latin ecclesiastical criminal law, the first subsection of which contains the criminal law of the CIC/1917 and a brief description of the questions that arose in connection with it. The next subsection discusses the evaluation of the discipline of the Codex of 1983 and the drivers of the reform of penal law, after which I present the development of Latin penal law from the promulgation of the CIC/1983 to the reformed penal law. In this part are presented and briefly analyzed the penal law measures published during the pontificates of Popes Saint John Paul II, Benedict XVI and Francis, and finally I provide an insight into the reform process of the book VI of the CIC/1983.

In the third large chapter, the possible role of Eastern penal law in the renewal of the Latin penal discipline is presented, with particular attention to the features of the Eastern penal law, that could have helped during the reform to create a well-applicable penal law system. After that, I examine in the chapter to what extent the possible solutions that can be read from Eastern law appeared in the new Latin penal law, as well as which goals were not realized. In the last subsection, the new Eastern penal law is briefly presented. The thesis is still based on the old Eastern penal law, it was examined, since the renewed Eastern penal discipline was introduced on April 5th 2023 and entered into force on June 29th. However, in order to get an

even clearer picture of whether Eastern discipline has an effect on Latin, or vice versa, it is essential to describe the new Eastern penal law.

This is followed by the conclusion, as well as the foreign language summary of the thesis and the appendix. The dissertation ends with a list of the sources that serve as the basis of the analysis, and a list of the literature items used.

4. Results of the dissertation

On the one hand, the thesis presents the specific characteristic of Eastern penal discipline, keeping in mind Latin law as well, so that we can better understand the differences based on different traditions. On the other hand, it offers an insight into the development of Latin penal discipline and the reform process of the book VI of CIC and trying to highlight the Eastern characteristics that could have been relevant from the perspective of the reform and could have helped in the development of the Latin penal law. Considering these, the results of the thesis can be summarized as follows:

1. The main characteristic of Eastern penal discipline is its medicinal character: it views sin as a disease, and punishment as medicine. This biblically based pastoral-medical character appears right away in the first canon of the penal law section (can. 1401/CCEO), which norm can be considered as a modern adaptation of canon 102 of the Synod of Trullos. The medicinal nature is emphasized by emphasizing the importance of the canonical warning, since no punishment can be imposed without it.The fact that some positive action can also be imposed as a punishment also contributes to strengthening this character of the codex. The penal law appears in the codex as a vehicle of active love (vehiculum caritatis). The medicinal nature is also emphasized by the fact that the CCEO does not apply the division of sanctions into censure and expiatory punishments, as is typical of the Latin code. In principle, all punishments in the current Eastern Code are considered to be of a medicinal character.

An important characteristic of Eastern penal law is the elimination of automatic punishments (poena latae sententiae), because they do not belong to the original Eastern tradition. We are talking about the elimination of these punishments because, due to Latin influence, latae sententiae punishments were also included in the earlier discipline of the Eastern Catholic Churches. Although these are no longer included in the Eastern codex itself, the supreme legislator still has the option to order automatic punishment for the Eastern ones as well (can. 1408/CCEO). Another significant characteristic of Eastern penal law is the stricter adherence

to the principle of legality. In contrast to the Eastern codex, the Latin does not adhere so strictly to this basic principle, as long as there is a rule (can.1399/CIC) in the latter that significantly expands (eliminates?) this principle. The absence of this norm in the Eastern codex raises the question for many authors as to what can be done if divine or canon law is violated in cases beyond the penal law facts established in the Eastern laws. I tried to show that the strict adherence to the principle of legality and the unconditional protection of the Church's mission are not incompatible.

2. The review of the development of the Latin penal discipline must certainly begin with the penal law of the CIC/1917. The publication of the CIC in 1917 can be considered a milestone in ecclesiastical legislation, because penal law regulations were issued in bulls or apostolic decrees before the preparation of the codex. In the penal discipline of the CIC/1917, the pastoral power of the Church also appears (can. 2214 § 2), and it is expressed that bishops are shepherds and not disciplinarians, and there is also the call to treat them with paternal and brotherly love towards those entrusted to them, however, this aspiration did not always appear in the norms of the codex. The Church also had to respond to the increasingly rapid development of society, which is why it became inevitable to reform the largely outdated canons.

Book VI of the new codex published in 1983, which reflects the spirit of the Second Vatican Council, differs significantly from its predecessor. The number of canons was drastically reduced, the principle of subsidiarity and decentralization played a significant role in the codex, and the severity of punishments eased. Most of the canons were formulated vaguely, the purpose of which was that the ordinary could determine how to act in each case. After the promulgation of the codex, it became clear very soon that the penal law does not work. The application of the norms of Book VI in practice was problematic, the text of the laws was difficult to understand, the criminal procedure was lengthy, the discretion of the ordinary was too great, the penal law could be applied within a relatively narrow framework, and the issue of latae sententiae punishments remained. In addition to these, the sexually criminal acts committed by clergymen also highlighted the need for a well-applied penal discipline. Until the start of the reform of penal law, provisions were published in the form of motu proprios that provide answers and guidelines to the questions and problems that have arisen in the meantime. The most important of these are *Sacramentorum sanctitatis tutela* and *Vos estis lux mundi*.

Pope Benedict XVI played a major role in starting the reform of Book VI of CIC. As a result of the process that started in 2007, a draft was created by May 2010, which was sent for comments to the bishops' conferences, the dicasteries of the Roman Curia, the major superiors of the monastic institutions, the faculties of canon law, as well as numerous canon lawyers and penal lawyers. Based on the returned proposals, the Schema recognitionis Libri VI Codicis Iuris Canonici was completed by 2011, which contains the reform proposals of the penal law CIC/1983. The main purpose of the revision is to make canonical penal law more effective and to strengthen its pastoral character. In the draft, they wanted to express that penal discipline belongs to the Church's pastoral activities, and that penal law must be applied.

The aim of the simpler wording of the norms is to help the church superiors in the application of penal discipline. The limitation of the discretion of the ordinaries can also be observed, the purpose of which is to prevent the church leaders from acting in a completely different way in the case of the same delict. Significant changes can be observed in the draft compared to Book VI of the CIC/1983: refinement of the texts; content changes, improvements; adding new paragraphs; strictures. For some standards, it can be observed that the codifiers took the CIC/1917 as a basis, and the canons contained therein served as inspiration. By changing the order of certain canons, the aim was to improve comprehensibility. Several new delicts were included in the second part (De singulis delictis deque poenis in eadem constitutis).

The penal law, which entered into force on December 8, 2021, contains many improvements compared to its predecessor. The most important features of the currently effective Book VI:

- the strengthening of the pastoral-medicinal character;
- narrowing of the discretion of the ordinary/judge;
- significant expansion of the range of expiatory penalties;
- extending the penalty of suspension to laymen as well;
- new delicts were added to the codex;
- the punishable acts related to the sacraments, which until now were contained in the documents Normae de gravioribus delictis, are now also found in the codex;
- in the case of delicts committed against the sixth commandment, the extension of the punishment to lay Christians holding church positions;
- detailed regulation of the term of limitation.

3. Eastern penal discipline has several specific characteristics that can help in the development of a well-applied Latin penal law in the following areas: strengthening the

medicinal-pastoral nature of punishment, eliminating automatic punishments, more coherently enforcing the principle of legality. In terms of sanctions, it seemed worthy of consideration to extend the suspension to lay people who hold church offices, to reconsider the punishment of excommunication in the light of the solution of Eastern discipline (excommunicatio maior, excommunicatio minor), and the need for the sharp separation of censure and expiatory punishments.

Analyzing the text of the norms of the new Latin penal law issued on May 23, 2021 with the apostolic constitution *Pascite gregem Dei* and which entered into force on December 8, 2021, we can conclude that the possible solutions, that can be read from the Eastern codex, appeared only to a very minimal extent in the new Latin penal discipline.

The new paragraph of canon 1311 of the effective Latin penal law emphasizes the pastoral character of penal discipline, and states that punishment is compatible with the Church of love, because it is one of the expressive means of caritas. It is indisputable that the medicinal character became more powerful in the new penal law, but it still does not have such an outstanding role as in the Eastern discipline.

Latae sententiae sanctions seem to be still considered by Latin penal discipline to be a more effective tool in certain cases than ferendae sententiae penalties, so no changes have been made regarding latae sententiae penalties compared to the previous Book VI of the CIC. However, this still raises questions about automatic penalties, especially in light of the provisions of can. 1318/CIC.

Canon 1399, also referred to as the general norm, is included without changes in the new Book VI of the CIC. In the past, criminal laws were so comprehensive that punishment was prescribed for the most serious delicts. With the introduction of many new delicts in the reformed penal law, the question of whether the general norm has any real utility in Latin penal discipline remains open.

In terms of punishments, the new Latin penal law acts in the same way as the Eastern discipline in the case of suspension, since such a sanction can be imposed not only on clerics, but also on lay people who hold ecclesiastical offices and positions. In the case of excommunication and the distinction between medicinal and expiatory punishments, the previous practice remained in Latin penal discipline.

Examining the new Eastern penal law, which was promulgated with the motu proprio Vocare peccatores on April 5, 2023 and effective since June 29, 2023, it can be concluded that during

the revision of Title XXVII of CCEO, which affected 22 canons, became more consistent with Latin penal law. Significant changes:

- precise and clear definition of when the authority must intervene in case of a delict;
- clarification and extension of penalties;
- appearance of new delicts and penalties;
- sexually delicts committed against minors and vulnerable persons are now also part of Eastern penal law;
- detailed regulation of the term of limitation.

5.Summary

Comparing the two penal disciplines, it can be clearly established that the new VI Book of the CIC was used as a basis during the revision of the Eastern penal law.

To the question posed in the introduction, what role can Eastern penal discipline play in the renewal of Latin penal law, and which possible solutions that can be read from Eastern law has appeared in the new Latin penal law, we can give a clear answer after analyzing and comparing the two codies.

Studying the two codices in parallel showed that the same legislator can apply quite different legal solutions to the same problem. This difference can help deepen the doctrine during a revision, thereby contributing to the refinement of the current regulation.

The opportunities provided by Eastern law were given during the reform of Book VI of the CIC, but these solutions only played a minimal role. The criminal law of the CIC of 1917 was taken into account during the renewal process rather than the Eastern discipline. In addition to the strengthening of the medicinal-pastoral character of the punishment, the extension of the suspension to lay people appears among the Eastern solutions in the new Latin penal law.

Studying the revised Title XXVII of the CCEO, we see that during the changes, the effective Latin penal law was taken as a basis, and the penal discipline of the Eastern Codex was adapted to it. Based on these, we can say that Latin law has a much greater impact on the Eastern law than the other way around.

The new canonical penal discipline clearly defines the delicts, the sanctions associated with them and their application. It is expressed that penal law is one of the expressive tools of pastoral love, the use of which is necessary so that bishops can properly manage the communities entrusted to them. Whether the reform really achieved its purpose and whether

the new penal law is efficient it will only be revealed later, if the superiors actually use the norms of the codex.