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SEXUAL OFFENCES AGAINST MINORS UNDER CANON LAW

Through the sacrament of baptism, each person is incorporated in community of the Church, which is made up by both saints and sinners. One of the roles of church penal law is to warn the faithful against committing sinful acts, which, in addition to the loss of sanctifying grace, are punishable by an additional penalty under church law. An is considered by the ecclesiastical legislator as a violation of one of the commandments of the Decalogue, so different criminal acts will violate different commandments of the Decalogue. Consequently, abuses that violate the Sixth Commandment can be distinguished: “Thou shalt not commit adultery.” In this category of offences, those affecting the youngest have a special status. The 1983 Code of Canon Law¹ calls such victims minors.

Canon law lists several behaviours that can be described as sexual offences against minors. Recently, the Church has been increasingly blamed by the public for not reacting or even seeing the problem of sexual abuse, especially among clergy and religious. In order to contradict such opinions, it is worth looking at the criminal behaviours in the sexual sphere that ecclesiastical legislator enumerates and the ways to punish the perpetrators.

1. The crime of paedophilia

According to the 10th revision of the International Statistical Classification of Diseases and Related Health Problems (ICD-10) and the

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

classification of the American Psychiatric Association (DSM-IV), paedophilia is classified as a sexual preference disorder [183-84 in ICD-10]. It is one of the crimes against the Sixth Commandment of the Decalogue that are particularly stigmatized and countered by the Church. Commonly, such a deed causes social outrage and pressure of the public on law enforcement authorities to punish it in a resolute manner.

The meaning of the term paedophilia, which is derived from Greek *paidophilia*, may be surprising, because in literal translation it means the love of children [Abramowiczówna 1962, 365]. In addition, somewhat surprisingly, an act which nowadays bears a special stigma was not a crime in ancient Greece; what is more, paedophilia was even glorified by the ancient people. A very similar attitude to this could be seen in the culture of the East, where paedophile acts were generally not prosecuted and were regarded as normal sexual practices [Dulko 2004, 423].

Such was the situation in the ancient non-Christian world, stemming from a different understanding of the human person and the sharing of different values in everyday life. The emergence of Christianity caused a breakthrough in this area. Christianity was the first to affirm the personality of every human being and stress the existence of inalienable dignity that all people are entitled to from the moment of conception. The Church could not, therefore, remain silent and, even less so, justify acts of sexual abuse using violence and threats, especially if the youngest were victimised. The Church's position in this regard has always been unequivocal. If such an act was committed by a cleric or a religious, he had to be severely punished for that, including the dismissal from the clerical state or placement in a monastery to do for penance. The lay people who committed acts of paedophilia were excommunicated.

The first official document of the Church to address this crime was the Constitution of Pope Leo X promulgated on May 5, 1514 at the Fifth Lateran Council *Suprernae dispositionis*, which prescribed that all lay and clergy be punished for the sexual abuse of children by canonical and civil sanctions. Subsequent popes confirmed the position of their predecessor, adding that this act should be treated as a degeneration, and the perpetrator should be handed over to the secular authorities and punished justly. If a clerical person was involved, he would have to be deprived of all holy

orders before being sent to a civil court. A person convicted of this crime, in accordance with the decree of the Holy Congregation of the Council *Lavellan seu Roman* of July 6, 1726 could not be reinstated as a cleric any more [Lempa 2013, 57-58].

This stringent stance towards this crime was upheld by the 1917 Code of Canon Law.² The legislator provided in can. 2357 § 2 that lay people committing a prohibited act with a person under 16 incurred legal infamy and that their ordinary bishop, according to his own judgement, was obliged to impose an additional penalty. Diocesan and religious clergy, according to can. 2359 § 2, were subject to suspension *ferendae sententiae*. In addition, they were considered legally defamed, and if they held any offices, benefices, dignities or church roles, they would be deprived of them. The most severe punishment was dismissal from the clerical state. These regulations, concerning secular clergy, religious clerics (can. 695) and clerics of societies of apostolic life (can. 746), were retained in CIC/83 [Lempa 2013, 58]. On 30 April 2001, changes concerning these abuses in ecclesiastical law were introduced, Pope John Paul II amended the *motu proprio Sacramentorum sanctitatis tutela*,³ which now treated sexual acts against persons under the age of 18 committed by Catholic clergy as grave offences – norms reserved to the Congregation for the Doctrine of the Faith. The applicable legal provisions in this case date back to 16 July 2010.⁴

In accordance with the applicable provisions of canon law, any act committed by cleric with a person under the age of majority, i.e. under 18, is considered an offence violating the sixth commandment of the Decalogue [Wytrwał 2009, 237]. The fact that the upper age limit for victims of paedophilia was raised by the Church indicates its attitude towards such behaviours. In this light, the ecclesiastical law appears to be

² *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, p. 1-593 [henceforth cited as: CIC/17].

³ John Paul II, Apostolic letter issued *motu proprio* by which are promulgated norms on more grave delicts reserved to the Congregation for the Doctrine of the Faith *Sacramentorum sanctitatis tutela* (30.04.2001), AAS 93 (2001), p. 737-39.

⁴ See Congregation for the Doctrine of the Faith, *Normae de gravioribus delictis* (21.05.2010), AAS 102 (2010), p. 419-31 [henceforth cited as: NGD].

very severe regarding the offence in question in comparison with secular law, according to which a crime is said to have been committed when the act has been committed with a person under the age of 15.

In the provisions that give us a greater insight into the crime in question, we will not find any implication that anyone can commit it, as it is, for example, in the case of murder (can. 1397 CIC/83). The ecclesiastical legislator expressly indicates that the perpetrator of such an act is a *clericus*, that is, a clerical person. It is not, therefore, the purpose of the Church's law in this respect to punish everyone, but only specific individuals. Nor should we assume that this crime is committed only by Catholic clergy. That this is not the case is demonstrated by the research carried out by the European Committee on Crime Problems commissioned by the Council of Europe, which confirms the fact that – when viewed against the phenomenon of paedophilia worldwide – people associated with the Catholic Church represent a small fraction of the total number of people liable for such abuses [Konarska-Wrzosek 1999, 65-67]. The fact that only priests and, exceptionally, persons associated with the Church may be punished under canon law is due to the ecclesiastical legislator's recognition that the state system intended to punish these acts works very well and adequately protects minors from any sexual abuse. The Catholic Church expressly condemns such an act committed by a cleric, considering it to be an extreme scandal, which should never have taken place. Christ said: "If anyone causes one of these little ones – those who believe in me – to stumble, it would be better for them to have a large millstone hung around their neck and to be drowned in the depths of the sea" (Matthew 18:6) [Lempa 2013, 59-60].

According to can. 1009 § 1, a cleric is a man who has been ordained to the diaconate, presbyterate or episcopate. Therefore, this group does not include alumni of diocesan and religious seminaries before they are admitted to the diaconate and cannot be tried by the ecclesiastical court for the crime of paedophilia. The list of individuals who are capable of committing this offence is extended by the Code of Canons of the Eastern Churches⁵ in can. 327, which, in addition to bishops, priests and deacons,

⁵ *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus* (18.10.1990), AAS 82 (1990), p. 1045-363.

enumerates also other ministers, calling them lower clerics. We should therefore assume that bishops, priests, deacons and lower clergy of the Eastern *sui iuris* Church, where such gradation has been preserved, can be considered potential criminals in this matter. It could be also problematic to specify unambiguously whether members of an institute of consecrated life can be perpetrators of this crime, since according to can. 207 § 1 CIC/83, unordained religious are also treated as the lay faithful. To resolve this question, we can refer to can. 695 § 1, which provides that a member of an institute who commits a prohibited act is to be dismissed or punished in some other way. By analogy, these provisions are used with respect to members of apostolic life (can. 746). If we analyse the regulations on the application of the church legislation (can. 17-18), it can be said that in order for a religious or a member of a society of apostolic life to be able to be expelled from his community, he must be definitively incorporated into it (can. 746), so only such a member of an institute can be the perpetrator of a sexual crime against minors [Lempa 2013, 60-61].

A cleric who performs this prohibited act against a person under 18 will always be punished on such a legal basis, even if he was not fully aware that his victim was not of age. Only in the case of an obvious deception (presenting a false identity document) or when acting negligently as provided by can. 1321 § 2, the offender cannot be punished for paedophilia.

Any person under 18 years of age may be a passive subject, or a victim, of this crime as provided by the norms specified by the Congregation for the Doctrine of the Faith. So, in this case no distinction is made as to gender, background, or state in the Church. These regulations increase the age limit considerably in relation to state law, which in the case of the Polish legislation provide that a sexual abuse of a person under 15 is considered a crime committed against a minor.⁶

By way of exception, a cleric who commits a sexual offence against a person who has attained the age of 18 will be treated as having abused a minor if the victim uses limited reason on a permanent basis, that is, is partially insane. This is not a provision contained in the code, but it was introduced in the *Norms* regulating crimes reserved to the Congregation for

⁶ Act of 6 June 1997, the Penal Code, Journal of Laws of 2018, item 1600, as amended, Art. 200.

the Doctrine of the Faith. Thus, although the Polish Penal Code will not treat such individuals as children when they reach the age of majority, according to these guidelines, in this particular case they will be protected by ecclesiastical law as minors.

The sexual act itself against a minor must be external and of a sexual nature. Doctrine distinguishes two forms of such behaviour: 1) paedophilia – sexual abuse of a pre-pubescent child (up to 13 years of age), and 2) ephebophilia – sexual abuse of a pubescent person (after 13 years of age) [Borek 2015, 77].

Legal sciences classify the following sexual acts as external: physical contact with a minor, i.e. heterosexual and homosexual sexual intercourse, anal or oral intercourse, sexual behaviour, e.g. touching the genitals and other erogenous body parts, exposing private body parts, masturbation of the penis or vagina, and others [Konarska-Wrzosek 1999, 66]. Similarly, acts committed by a cleric in the presence of a child, e.g. masturbation, even without his or her involvement, showing pornographic content, or kissing, especially repeatedly, are also considered prohibited acts violating the sixth commandment against minors [Lempa 2013, 63]. Therefore, all external acts carried out by a clerical person in the presence of a minor, who may or may not be aware of what is happening, are regarded as paedophilia if they have a sexual connotation. Church doctrine extends the understanding of this criminal act to situations where there is no direct contact with the victim. Such situations include: downloading and providing pornographic content, asking a minor via the Internet or telephone to come to an intimate meeting [ibid., 64].

The experience of “harmful touch,” as paedophilia may be called, can have a great impact on its victims. Scientific research has demonstrated that minors who have witnessed or participated in various sexual abuses often have problems with their proper psychophysical development. This experience may lead to an intense fear of establishing normal emotional relationships with others, cause prejudice or disturb normal mental development. Having been through such childhood experiences and trying to recover from the past, the victims will frequently resort to various perversions or even prostitution [Giza and Morasiewicz 1966, 411]. In addition to psychological harm, which will have a major impact on the

functioning of the victims in the world, they may frequently develop an aversion to the Church, which in turn may be manifested as rejection of religion, and even fight against it [Lempa 2013, 66]. Consequently, it is necessary for the Church and other institutions to ensure their protection of the victims.

The crime in question is widely condemned by society because it affects, among other things, the youngest, often gullible and vulnerable human beings. By issuing new regulations in recent years, the Church has too shown that it understands this problem and is not indifferent to the enormous harm that paedophile acts inflict. One method of preventing an offence is to lay down a penalty for it in order to deter a potential perpetrator. In this regard, the Church also shows its firm opposition by imposing very severe punishments on clerics who commit offences involving minors against the sixth commandment of the Decalogue. According to can. 1395 § 2, CIC/83 provides for a penalty *ferendae sententiae*, which is mandatory, indefinite, up to the point of losing the clerical state. Only when the offender has already been punished by the secular authorities according to can. 1344, 2°, the judge may refrain from imposing a penalty whatsoever or impose a less severe one [Syrian 2003, 166]. With regard to this crime, the ecclesiastical court is obliged to conduct a criminal trial even if a state law enforcement agency has already passed a sentence in this case [Borek 2015, 79].

If a church criminal trial leads to the imposition of the highest penalty, i.e. the dismissal from the clerical state or expulsion of a religious from an institute, a special procedure, or *modus procedendi*, is instituted. Pedophilia cases are not easy to handle. In particular, the legal status of the offender must be taken into account. If he is a clerical person, then the course of action is determined by the Congregation for the Doctrine of the Faith. However, if the perpetrator is a religious who has not been ordained (or a nun), then the procedure involves expulsion from the institute, effected by the competent superior using administrative measures. In the latter case, it should be remembered that the competent superior may refrain from instituting an expulsion procedure if he/she considers that the offender can otherwise be justly punished, the victim compensated, and the scandal remedied [Wyrwał 2009, 229-253].

2. The crime of solicitation

One of the crimes against the Sixth Commandment that were precisely defined was the crime of solicitation, which was officially recognized as a grave sin by Pope Pius IV in 1561 in a letter addressed to the Archbishop of Seville, in which he warned against the scandal resulting from the sin of solicitation of women and obliged the bishop to prosecute such behaviour and punish it justly. These indications, already having the form of a legal norm for the whole Catholic Church, were confirmed by Pope Gregory XV in the constitution *Universi* of 30 August 1622 [Lempa 2013, 77], a state which has not changed to this day. Currently, this crime is regulated by CIC/83 in can. 1387.

Essentially, it involves persuading or encouraging a penitent by the confessor during or on the occasion of sacramental confession or only under its pretext to commit a sin *contra sextum* [Stokłosa 2011, 111-12]. The perpetrator of this crime, i.e. the active subject, may be only the priest (*sacerdos*): a bishop or presbyter, even if he is not authorised to hear confessions. Solicitation always comes from the confessor and targets the penitent, i.e. the passive subject [Syryjczyk 2008, 123-24], and this can be anyone: a man or woman, a lay person, a priest, a woman or man religious, a member of a society of apostolic life, a child or other minor regardless of gender [Wójcik, Krukowski, and Lempa 1987, 262]. This crime is also committed both when the attempt made by the cleric is unsuccessful and when the act of sacramental confession is not fully satisfied [Idem 2013, 81].

The following conditions must be met in order for a crime to take place: 1) the penitent must be solicited by the confessor to sin against chastity; 2) the act is connected with the sacrament of penance; 3) the solicitation centres on sinning with the confessor.

However, the solicitation itself must follow from the confessor, not from the penitent, and only when it satisfies all of these conditions is it judged by the Holy See [Borek 2004, 119-20]. In other situations, where solicitation is intended to commit a sin against the Sixth Commandment, either on one's own or with a third party, such cases are considered by the ordinary himself because such acts are not reserved to the Congregation for the Doctrine of

the Faith [Stokłosa 2011, 114-16]. The offence itself can take various forms, for example, it can involve persuading or encouraging someone, threatening, stimulating with words, gestures or by writing. When it is the penitent who solicits and the cleric consents, this does not constitute a crime of solicitation [Syryjczyk 2008, 124].

It is forbidden only to persuade someone to commit an external sin against the Sixth Commandment of the Decalogue, but it will not constitute a crime to persuade someone to sin against the Ninth Commandment or against the other Commandments. For a crime to exist, it is irrelevant whether the penitent yields to persuasion or not, the offence consists in the mere fact of persuasion. The provisions of can. 1387 CIC/83 and the *Normae de gravioribus delictis* specify that solicitation takes place only when it is performed in connection with the celebration of the sacrament of penance and reconciliation, that is, *in actu confessionis*, *occasione confessionis*, and *praetextu confessionis*. Two situations can be distinguished here: the first, when solicitation takes place during a sacramental confession, and the second, when solicitation takes place either immediately before or immediately after a confession, in which case there may be no sacramental confession at all, but it is required that the person who is persuaded has a sincere intention to confess. Crime can also take place when the confessor persuades a person to commit a sin *contra sextum* under the pretext of confession. In this case, there is no direct intention of confessing sins, but there is an intention to meet under the pretext of confession for the purpose of solicitation, which is also punishable [ibid., 125-26].

The penalty provided for by the ecclesiastical legislator for the offence of solicitation is the mandatory penalty *ferendae sententiae*, determined only in part because it is up to the judge or ordinary to take a final decision on the type of penalty applicable in a particular case [Borek 2004, 97-146]. can. 1387, depending on the severity of the crime, provides for the penalty of suspension, prohibitions or privations, and in more serious cases even dismissal from the clerical state. In the case of solicitation, dismissal from

the clerical state is a mandatory penalty, which further emphasizes the gravity of this crime and the attitude of the Church towards it.⁷

In some cases, this crime is examined by the Congregation for the Doctrine of the Faith itself. This is the case if persuading to sin against the Sixth Commandment of the Decalogue in the act of or on the occasion of confession, or under the pretext thereof, has a purpose of committing the sinful act with the confessor alone. The Congregation reserves only a few offences against the canonical dispositions under can. 1387, but the content of this canon is formulated in such a way as to make it possible to punish all possible crimes related to *solicitatio ad turpia*. An example of such an act, which will not be considered by the Congregation – even though it is a crime of solicitation – will be, for example, to advise during confession to use contraceptives, which is contrary to the teaching of the Church, or to endorse extramarital relationships, or to persuade the penitent to commit an internal sin [Lempa 2013, 124]. The criminal penalty imposed for this act, which is prohibited by ecclesiastical law, depends on the gravity of guilt or scandal, but its punishability is obligatory. The perpetrator may be punished with suspension or expiation penalties, and in more serious cases dismissed from the clerical state [Arias 2011, 1037].

The severity with which the ecclesiastical legislator approaches the crime of solicitation results from a few premises. First of all, this act is a profanation of the sanctity of the sacrament of penance. Secondly, it undermines the credibility of the Church in terms of morals, because it is committed by a priest who is to be a role model. Thirdly, the penitent may be seriously offended and in extreme cases may lose his or her faith or even become anticlerical. In particular, any symptoms of this offence against minors should be stigmatized and eradicated, since their faith and morals

⁷ In the case of most crimes punishable by dismissal from the clerical state under CIC/83, we deal with a facultative penalty. The obligatory penalty of dismissal from the clerical state is provided by the legislator in the following canons of CIC/83: 1387 – the crime of solicitation; 1395 § 2 – a cleric who offends the Sixth Commandment by force or by threats, or does so in public or with a minor under the age of 16. Other crimes are optionally punishable by dismissal from the clerical state: 1364 – apostasy, heresy, schism; 1367 – profanation of consecrated persons; 1370 § 1 – physical force against the Roman Pontiff; 1394 § 1 – a cleric attempting marriage; 1395 § 1 – a cleric living in concubinage and continues in some other external sin *contra sextum*.

are still being formed at such a young age, and the experience of a mere symptom of solicitation may weaken their faith and deter from the sacrament of penance and from the Church.

3. Dissemination of pornography

Another offence against the Sixth Commandment of the Decalogue that may affect minors is pornography, i.e. the involvement in the circulation of materials such as photographs, films depicting obscene poses or sexual activities performed in order to induce sexual arousal in the viewers. The Catholic Church explicitly condemns pornography, stating that it insults chastity by degenerating the conjugal act, destroys human dignity, moves people into the world of illusion – all this being a serious moral offence and should therefore be banned by the civil authorities.⁸ In CIC/83 we will not find a single provision that would directly classify this act as a crime. In the same way, it is included in the category of offences against the Sixth Commandment of the Decalogue, as provided for in can. 1395 § 2. The Congregation for the Doctrine of the Faith condemns this act in specific terms, especially if involving people under 14 years of age, and classifies it as one of the most serious crimes against morals: “the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology” (NGD, Art. 6 § 1, 2°).

In light of the regulations issued by the Congregation for the Doctrine of the Faith, only a *clericus* (cleric), in other words, a deacon, presbyter or bishop can be an active subject of this crime. Likewise, it is immaterial whether the cleric belongs to an administrative unit of the Church or a religious community or a society of apostolic life [Lempa 2013, 70-71]. The aggrieved party, that is, a passive subject as prescribed by the provisions of law, is a minor under 14 years of age who is depicted in any way by pornographic content. In situations where it is difficult to determine the age of a particular person presented by such content, experts are appointed to determine the exact age by analysing the person's anatomy,

⁸ *Catechismus Catholicae Ecclesiae*, Libreria Editrice Vaticana 1997, no. 2254.

which makes it possible to establish whether the act is already a crime or a grave sin.

According to the Norms, child pornography is a fact when someone acquires, possesses, or distributes pornographic content involving minors under the age of 14 for sexual gratification. This act can be done by a cleric using any technology. The causative act can be achieved in three ways: 1) by knowingly acquiring pornographic content from third parties; 2) by possessing it, which may result from its conscious or unknowing acquisition; 3) by disseminating it, which consists in making such material available to third parties [Borek 2014, 229-30].

This offence can be committed by acquiring, possessing, or distributing specific pornographic content. The legislator concludes that such acts are performed by the offender knowingly, which will make the act always punishable. Quite obviously, the very desire to commit this crime can be seen, for example, in the use of child pornography on the Internet, which requires a great deal of conscious effort on the part of the perpetrator, which already shows the conscious nature of this act. If we accidentally come across a website with such content – which was not our intention – and we immediately close it, this can be treated as an exception. When pornographic content has been deleted from the computer, this fact does not release the perpetrator from the responsibility for the previously committed act, but it can have an attenuating effect on a potential sentence [Lempa 2013, 73-74].

Church regulations ensure special protection of the youngest children from the negative effects of pornographic content, yet its evil starts when they are created. The particularly harmful effect of this crime against children is that they are stripped of their dignity and their right to privacy is infringed. It also begets the very risk of paedophilia and its further spreading, which is even more horrendous. Someone who starts by satisfying his desires by means of visual content at some point will want to try it in real life. In the case of clergy, there is another negative effect, which is public scandal and destruction of the moral authority of the Church, even if the perpetrator did not act in public.

As far as punishability is concerned, acts related to pornography of minors under 14, in accordance with the provisions of the *Norms*, concern

special offences reserved to the Congregation for the Doctrine of the Faith and are identical to those occurring against the Sixth Commandment of the Decalogue against minors under 18 years of age. A penalty is imposed obligatorily by the judge appropriately to the act committed [ibid., 75-76].

4. The offence of absolving an accomplice in sin against the Sixth Commandment of the Decalogue

Acts that infringe the rights of minors related to their sexuality also include the offence of granting absolution to an accomplice in sin against the Sixth Commandment of the Decalogue. This act of a cleric was officially recognized as an offence in the Church's universal law by Pope Benedict XIV by virtue of the apostolic constitutions: *Sacramentum poenitentiae* of June 1, 1741 and *Apostolici muneris* of February 8, 1745. Under these normative acts, this act was punishable by excommunication [ibid., 88]. CIC/17, promulgated later, was explicitly stipulated in can. 2367 § 1 that absolution granted to or even an attempt at absolving of an accomplice in sin against the Sixth Commandment is punishable by excommunication *latae sententiae*, reserved to the Holy See *specialissimo modo*. This is also confirmed by the legislator in can. 1378 § 1 CIC/83. Under the current legislation, the following conditions must be met for this offence to exist: partnership of a confessor and his penitent in sin against the Sixth Commandment and granting sacramental absolution from the committed act [Syrian 2008, 97].

This offence can only be committed by a validly ordained priest (*sacerdos*), i.e. a bishop or presbyter with the right to listen to sacramental confession (can. 965). The passive party to this act punishable by the Church is the partner in sin against chastity with the cleric (in this case the confessor), and he himself appears as his penitent. So it can be anyone, a man or a woman, an adult or an under-age person. The only group of minors who cannot be the subject of this crime are those who are described by the code as lacking the use of reason, in other words, children (can. 97 § 2) – they cannot receive the sacrament of penance and all those who are made equal with children by the law (can. 99).

The very offence of absolving an accomplice in sin against the Sixth Commandment of the Decalogue is a consequence of a previously com-

mitted sin against chastity, for example, sexual intercourse, mutual harassment, harassment or the assimilation of pornographic content [Lempa 2013, 90]. The very act of confessing an accomplice in this sin is expressly forbidden by can. 977, save one exception, i.e. in danger of death. One can only speak of this crime only if both the confessor and penitent have committed a grave sin beforehand. We must therefore exclude all cases where at least one party, no matter for what reasons, such as the mental state, did not commit a grave sin. According to can. 1321 § 1 CIC/83, a punishment cannot be administered if no external violation of this provision has taken place. Therefore, in the commission of this proscribed act one must be able to see both the internal and external element [Calabrese 1998, 299]. If no external element can be identified, it is impossible to speak of complicity, which is to be interpreted as an act involving, consciously and voluntarily, at least two or more persons.

As a result of such an act, a penalty is incurred only by the cleric, in this case by operation of law itself, and the penalty need not be pronounced. The penitent is punished by being deprived of valid sacramental absolution. In this case, too, minors who have already been harmed physically and mentally by an act which breaks the Sixth Commandment are particularly vulnerable. If a cleric attempts to absolve the penitent of his or her sin, a lot of spiritual damage is done as well as the illusory notion is created that he has been reconciled to God [Lempa 2013, 92]. The reason for this severe punishment – excommunication *latae sententiae*, reserved to the Holy See, which is incurred by the confessor himself – is the gravity of the desecration of the sacrament of reconciliation. The problem could arise if it became necessary to conduct a procedure intended to elicit a declaration of the penalty incurred in this way. It would be very difficult to guarantee the accused the opportunity for self-defence (can. 1720, 1°), which would have to involve breaking the seal of confession. Another problematic issue would be the stage of hearing evidence, because in this case the only evidence would be a report provided by the absolved person, that is, the accomplice in sin. And the ancient *testis unus testis nullus* principle provides, one could not achieve enough moral certainty required by the law as to the occurrence of this crime. The adage *testes ponderantur, non numerantur* may come in handy as it emphasises the importance of witnesses' testimonies in an investigation and not their number. For this

reason, in this situation the credibility of the person reporting the crime committed will be of particular importance in assessing the testimony (NGD, Art. 20).

Conclusion

We have not discussed all sexual crimes against minors. However, the very fact that church law addresses these difficult issues in its regulations and does so in great detail, firmly contradicts the allegations of many circles that the Church does not recognise the problem of sexual abuse of minors in its community. The Church is made up by both saints and sinners, so it is still necessary to advance the teaching of church criminal law, the aim of which is not only to punish offenders but also to generally prevent new offences.

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Sexual Offences Against Minors Under Canon Law

Summary

The Catholic Church in the 1983 Code of Canon Law as well as in many norms outside the Code lists crimes against the sixth commandment of the Decalogue, which may affect minors. Among them, pedophilia occupies a special place, which is the most obvious act that affects minors and their sexual sphere. However, this is not the only criminal act that the church legislator deals with specific criminal provisions. Other prohibited acts that may affect the youngest members of the Church and break the sixth commandment of the Decalogue are solicitation, dissemination of pornography and absolution of the partner in sin against the sixth commandment of the Decalogue. All of these acts are considered crimes for which an appropriate criminal sanction is at risk. Such a detailed approach of the Church to this problem emphasizes his attitude to sexual crimes and concern for the youngest and protection of their rights and personal dignity.

Key words: crime, punishment, minor, pedophilia

Przestępstwa seksualne wobec małoletnich w prawie kanonicznym

Streszczenie

Kościół katolicki w Kodeksie Prawa Kanonicznego z 1983 r., jak i w wielu normach pozakodeksowych wymienia przestępstwa przeciw szóstemu przykazaniu Dekalogu, które mogą dotyczyć małoletnich. Wśród nich szczególnie miejsce

zajmuje pedofilia, która jest najbardziej oczywistym czynem, który dotyka małoletnich oraz ich sfery seksualnej. Nie jest to jednak jedyny czyn przestępczy, którym zajmuje się prawodawca kościelny. Innymi czynami niedozwolonymi, które mogą dotyczyć najmłodszych członków Kościoła i łamią szóste przykazanie Dekalogu to: solicytacja, rozpowszechnianie pornografii oraz rozgrzeszenie współnika w grzechu przeciw szóstemu przykazaniu Dekalogu. Wszystkie te czyny są uznane za przestępstwa, za które grozi odpowiednia sankcja karna. Takie szczegółowe podejście Kościoła to tego problemu podkreśla jego stosunek do przestępstw seksualnych oraz troskę o najmłodszych i ochronę ich praw oraz godności osobistej.

Słowa kluczowe: przestępstwo, kara, małoletni, pedofilia

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