

## THE CRIME OF ABSOLVING AN ACCOMPLICE IN A SIN AGAINST THE SIXTH COMMANDMENT OF THE DECALOGUE

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**Abstract.** The article discusses the issue of the crime of absolving an accomplice in a sin against the sixth commandment of the Decalogue, as defined by the church legislator in Can. 1384 of the Code of Canon Law. It is also included in the catalogue of torts reserved for the judgement of the Dicastery for the Doctrine of the Faith. Following the presentation of the objective and subjective elements of the crime, attention is turned to the issue of its punishability. For this to be possible, it is necessary to establish the guilt of the confessor, who must have acted consciously and deliberately. A particular difficulty in establishing the occurrence of a crime is the determination of complicity, which is crucial to the case. In the last part, the author presents some procedural aspects necessary for the conduct of the proceedings aimed at judging the possible perpetrator of the tort in question. The sacrament of penance, which belongs to the *forum internum*, enjoys special protection in church legislation, which does not allow acts that could violate the sacramental seal of confession.

**Keywords:** *delicta graviora*; absolution of an accomplice; sixth commandment of the Decalogue; complicity.

### INTRODUCTION

Holy sacraments administered by the Catholic Church being a depository of the means leading man to salvation, which according to Can. 1752 of the 1983 Code of Canon Law<sup>1</sup> should always be the supreme law in the Church community, require special protection for their valid and worthy exercise.

Among the seven signs of grace established in the Catholic Church, the sacrament of penance holds a special place as it touches a person's conscience and the intimate relationship with God associated with it. The faithful who go to confession, confessing their sins to an authorized minister, repenting of them and having resolved to amend, receive from God

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<sup>1</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1-317 [hereinafter: CIC/83].

the forgiveness of sins committed after baptism (cf. Can. 959 CIC/83). Individual and integral confession and absolution constitute the only ordinary way by which the faithful, conscious of grave sin, are reconciled with God and the Church (cf. Can. 960 CIC/83). The church legislator provided strict norms for the valid and decent celebration of the sacrament (cf. Can. 961-964 CIC/83). The requirements for the minister are also strictly defined, and their observance guarantees the validity and fairness of the celebration of the sacrament of penance (cf. Can. 965-986 CIC/83).

One of the prohibitions subject to a severe sanction is the granting of absolution to an accomplice in a sin against the sixth commandment, which is invalid except in danger of death (cf. Can. 977 CIC/83). A confessor who grants such absolution also commits a crime specified in Can. 1384 CIC/83, incurring excommunication *latae sententiae*, reserved to the Holy See. Judging it falls within the competence of the Dicastery for the Doctrine of the Faith.

This study analyzes the code's material norms as well as those issued in this respect and included in the *De delictis reservatis*.<sup>2</sup> It is not only a reflection on the legislator's dispositions, but also an attempt to show their practical application and relevance to factual situations that may occur. The method of judging and punishing the active subject of the crime, which is always the confessor, depends on them.

## 1. ELEMENTS OF THE CRIME OF ABSOLVING AN ACCOMPLICE IN A SIN AGAINST THE SIXTH COMMANDMENT OF THE DECALOGUE

The norm applicable to the crime referred to in Can. 1384 CIC/83 is essentially consistent with the previously applicable discipline. However, it has undergone certain changes, which should be assessed as a simplification of the norm, which in the current code is a form of combination of the provisions contained in Can. 977 and Can. 1384 CIC/83 [Dhas 2019, 103].

The above-mentioned simplification, however, does not mean downplaying the gravity of the crime in question, as evidenced by its inclusion in the *delicta graviora*, the judgment of which is reserved to the Dicastery for the Doctrine of the Faith (Article 4 § 1, n. 1 of *De delictis reservatis*), but, as Velasio De Paolis points out, is an expression of the general softening of the legislator's position on the issue of punishing crimes against chastity and departure from the severity of discipline that Pope Benedict XIV

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<sup>2</sup> Congregazione per la Dottrina della Fede, *Norme sui delitti riservati alla Congregazione per la Dottrina della Fede* (11.10.2021) [hereinafter: *De delictis reservatis*], [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20211011\\_normedelittiriservati-cfaith\\_pl.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20211011_normedelittiriservati-cfaith_pl.html) [accessed: 04.12.2023].

included in the constitution *Sacramentum poenitentiae*,<sup>3</sup> and which was also reflected in the Code of 1917 [De Paolis and Cito 2008, 342].

According to the applicable norm, a confessor who, except in danger of death, absolves an accomplice in a sin against the sixth commandment of the Decalogue, does so invalidly (Can. 977 CIC/83) and runs the risk of incurring excommunication *latae sententiae*, reserved for the Holy See (Can. 1384 CIC/83). This standard seems simple only on the surface. However, the four lines of dispositions contained in the two canons raise at least four questions: What sins are we talking about? What does complicity in these sins mean? Is it only the danger of death that authorizes absolution from these sins? When and how will granting the absolution of it definitely be punishable? To answer the above questions, it is necessary to analyze the objective and subjective elements of the crime in question.

### 1.1. Objective element

The legislator in Can. 977 CIC/83, sanctioned the invalidity to absolution, granted in ordinary circumstances, from sins against the sixth commandment of the Decalogue committed by the confessor together with the penitent. It should be clarified that these are mortal sins that must be both internal and external, although they may take different forms. For there to be a sin that falls under the disposition of Can. 977 CIC/83, there must be an external manifestation of internal desires. Thoughts or lustful desires, also mutually directed by two or more partners, which have not progressed from morally disordered intention to physical fulfillment, do not constitute the matter about which the legislator speaks in the above-mentioned canon [Woestman 2004, 269].

An important aspect that must be paid attention to when assessing the actions of partners in a *contra sextum* sin is its objective severity. For such a category of moral offense to occur, awareness and voluntariness of committing it are necessary. In the case of a common sin against chastity, there must be a seriousness of the offense both on the part of the confessor and the penitent, both in the material and formal sense. If the signs of a grave sin occur only on the part of one of the partners, then he or she will not be subject to the prohibition of Can. 977 CIC/83 [Syrjczyk 2003, 124].<sup>4</sup> This covers circumstances such as age, mental condition, and violence,

<sup>3</sup> Benedictus XIV, *Constitutio Sacramentum poenitentiae* (01.06.1741), AAS (1917), pars II, pp. 505-508.

<sup>4</sup> It should be noted that, especially on the part of the confessor, it is difficult to assume a lack of awareness of the gravity of the sin against the sixth commandment of the Decalogue. Traditional doctrine teaches that sexual experiences – wanted and voluntarily accepted – constitute grave matter, therefore, it is difficult to recognize *parvitate materiae* in this area

which may prevent the person involved from committing a serious sin. This issue will be developed when discussing the issue of complicity in sin.

The category of grave sins against chastity includes those that the doctrine considers to be consummated, such as intercourse, masturbation, or those that are not consummated, such as watching pornography together or exchanging such materials.<sup>5</sup> All venial sins against the sixth commandment of the Decalogue and other grave sins committed together with a confessor are not covered by the disposition contained in Can. 977 and 1384 CIC/83 [Calabrese 2006, 299-300; Borek 2015, 47].

### 1.2. Subjective element

Considering the subjective aspect of the crime typified in Can. 1384 CIC/83, in conjunction with Can. 977 CIC/83, an active and passive entity in committing the tort should be distinguished. The active subject is the confessor who committed a grave sin against chastity together with the penitent and then granted him or her absolution from this sin. It does not matter whether or not at the time of committing the sin the confessor had already received the priestly or episcopal ordination.<sup>6</sup> The passage of time between the commitment of the sin and the granting of absolution is also irrelevant.<sup>7</sup> Even after the expiry of the limitation period for a criminal complaint, which in the applicable legislation is twenty years for *delicta graviora*, the confessor remains bound by the norm of Can. 977 and 1384 CIC/83 [Dhas 2019, 112]. A confessor deprived of the general *facultas* authorizing him to administer the sacrament of penance, when granting absolution to an accomplice in a sin *contra sextum*, fulfills the features of Can. 1379 § 1, n. 2, which sanctions unauthorized hearing of confessions, not the commented Can. 1384 [Syryjczyk 2003, 98; Pawluk 1990, 138].

The passive subject of the crime referred to in Can. 1384 CIC/83 is a penitent. From a criminal point of view, his or her awareness of their confessor is not important, in other words, when confessing sins in confession,

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[Dhas 2019, 111].

<sup>5</sup> More on sins against the sixth commandment of the Decalogue: Tuohey 1995, 592-631; De Paolis 1993, 293-316; Provost 1995, 632-62; Grabowski 1995, 527-91.

<sup>6</sup> The term *sacerdos* used in Can. 1384 CIC/83, undoubtedly includes priests and bishops, who are the only clergy who can administer the sacrament of penance.

<sup>7</sup> Procedural practice shows that sometimes two crimes may be committed during the same celebration of the sacrament of penance. The first of them is performed by the confessor, who effectively persuades the penitent to sin against the sixth commandment of the Decalogue (the crime of solicitation), which takes place in a direct temporal sequence. Another offense is committed by absolving this penitent in the same confession, and this act also includes, in accordance with the principle of integrity, absolution from a common sin against the sixth commandment of the Decalogue. More on the crime of solicitation: Kamiński 2023, 93-108.

including a sin *contra sextum* committed with the person receiving his or her confession, whether the penitent is or is not aware that the confessor is their accomplice. The person who commits the crime of absolution is the confessor, not the penitent [Dhas 2019, 112]. The question remains whether the penitent, aware of the unlawful and criminal nature of the absolution granted to them, is complicit in the crime by consenting to it. Dariusz Borek gives an affirmative answer to this question, giving as an example a penitent priest who effectively persuades his confessor – and at the same time an accomplice in a sin *contra sextum* – to grant him absolution. According to this canonist, in such a case nothing prevents from applying criminal liability to the penitent under the principles set out in canon 1329 CIC/83. It does not matter whether he is liable as an accomplice or a necessary participant, because in both cases he incurs the same penalty [Borek 2015, 50].

Complicity, which the legislator treats in Can. 977 CIC/83 concerns, however, sin against the sixth commandment of the Decalogue, not absolution. That is why this issue requires the above-mentioned development.

For complicity to occur, which results from its nature, it is necessary for at least two people to participate in a given act and have previously agreed on joint action. In the matter under analysis, it is not important whether the accomplice in a sin is of the same or the opposite sex, or whether he or she is a transsexual person. This person's marital status is not important. It does not matter whether the accomplice is a clergyman or a consecrated person. An accomplice may be either an adult or a minor, or even a child, although this requires further explanation. It is important that this person consents to committing a common grave sin against the sixth commandment of the Decalogue and actually commits it with their accomplice. Otherwise, there can be no question of complicity [Barbero 2010, 207].

At this point it is necessary to ask about the complicity in sin of people who do not have such an ability, which may result from various reasons, permanent or temporary, such as disability, mental illness, abuse during sleep, during alcohol intoxication, or rape. A person in such a situation cannot commit a grave sin against chastity and therefore will not be his accomplice [Syrjczyk 2003, 97]. Therefore, actions with people who do not consent to them and clearly oppose to them do not result in a serious sin on their part, and criminal features appear only on one side [Montini 1997, 219; Calabrese 2006, 284].

Minors, especially children, constitute a special category when discussing complicity. The doctrine emphasizes that in order to become an accomplice in a grave sin against the sixth commandment, awareness of the gravity of the guilt and consent to committing such a sin with another person or persons are required [Cito 2008b, 324].

It is true that in Can. 97 § 2 CIC/83, the legislator included the presumption of the use of reason by a child who has completed the seventh year of age, but such *praesumptiones iuris tantum* cannot be treated as equivalent to evaluative discernment as to the gravity of the sin. Varuel Dhas believes that for this reason, children who have not reached the age of consent to such an act cannot be included among passive entities participating in the sin against the sixth commandment. The problem is that the legislator does not specify what age should be considered appropriate, as state legislators do when specifying the minimum age for legal sexual intercourse.<sup>8</sup>

This author believes that although the church legislator, as a rule, precisely determines the age required to perform a legal act, in this case, by omitting such a definition, created a legal gap that requires filling. Dhas asks the following questions: Can the capacity to consent to a sexual act be generally presumed in every child? Does an eight-year-old child who, as a rule, already receives the sacrament of penance have such an ability? Are people whose use of reason is permanently impaired, and who are therefore treated like children, able to consent to participation in sin against chastity? [Dhas 2019, 117].

Determining such capacity is of fundamental importance for the recognition of complicity, and, therefore, it may happen that the absolution of a child who has not reached the age appropriate to recognize the gravity of sin by a confessor who has committed a sin *contra sextum* with him will be validly and equitably granted. There remains, of course, the issue of liability for the sexual abuse of a minor, which constitutes the crime referred to in Can. 1398 § 1, n. 1-2 and in *De delictis reservatis*, Article 6 § 1, if at the time of committing the abuse the confessor was already a clergyman. Absolution of such an accomplice would also be an aggravating circumstance for the confessor when imposing a sentence for the crime of sexual abuse of a minor [Borek 2019, 86]. Additionally, it should be stated that if the abuse of a minor or a person equivalent to a child also took place by other persons cooperating with the confessor, then while the child cannot be treated as an accomplice of such a sin, the other persons will be considered as such, hence their possible subsequent absolution by the confessor-accomplice will not be valid.

To establish complicity in a sin against the sixth commandment of the Decalogue, it does not matter on whose initiative the common grave sin was committed – the confessor or the penitent [Dhas 2019, 113]. However, one may ask why only these sins were considered impossible to obtain valid absolution of? The following arguments are put forward in the doctrine:

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<sup>8</sup> For example, in Italy it is 14 years, in Poland 15 years, in the United States 16 years, and in India 18 years [Dhas 2019, 117].

these sins cause the danger of moral degradation of the confessor; they may also contribute to the deformation of the conscience of the penitent as an accomplice; these sins, because they occur in intimate circumstances, may result in a relationship between the accomplices, which will contribute to recidivism and easy concealment of it from the Church community, because as known only to the accomplices, it does not cause harm to other people; distortion of awareness of the moral nature of this sin, which makes the issue of conversion and penance difficult [Cito 2008a, 328; Stryjczyk 2003, 101-102]. It is also important that, from the point of view of natural law, an accomplice should not assess and judge an accomplice who has committed a wrong together (*nemo iudex in causa sua*) [Dhas 2019, 101].

## 2. PUNISHABILITY

The Church legislator, by providing for severe punishment for the crime of absolving an accomplice in a sin against the sixth commandment of the Decalogue, safeguards the sanctity of the sacrament of penance, protecting the Church against insult and scandal among its faithful, which leads away from the principles of Christian morality. Yet another reason justifying the imposition of a criminal sanction on the act in question is also general prevention, i.e. its educational importance [Pastuszko 1999, 354-63].

Answering questions about the punishability of the crime according to the principles of Can. 1384 CIC/83 and situations in which it may be possible to grant the absolution or the punishment for the crime will be milder, it should be noted that a confessor who grants absolution to an accomplice must do so intentionally. He must also be aware that he is absolving his accomplice. Such awareness may be abolished in a situation where both parties do not know each other as accomplices in the sin, or the priest does not recognize that the person making confession is the same one with whom he committed the sin [Dhas 2019, 111]. He must know that he is trying to absolve an accomplice of sin *contra sextum* and be willing to do so, even though he knows it is forbidden. The response of the Holy Office of November 16, 1934 is no longer applicable here – it stated that the crime was committed by a confessor who, before committing a common sin, tried to convince the other person/persons (in sacramental confession or outside it) that the act they would commit was not sin or a grave sin, as a result of which the deceived penitent did not then confess this sin to the confessor-accomplice, who then granted him or her absolution.<sup>9</sup>

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<sup>9</sup> Congregatio Sancti Officii, Decretum *circa can. 2367 § 2, Codicis Iuris canonici* (16.11.1934), AAS (1934), p. 634.

Committing a crime, and consequently the possibility of punishing it, will occur only when the priest pronounces the words of sacramental absolution (*absolvo te a peccatis*), with the intention of granting it [Borras 1987, 57]. There is no reference in the current norm to simulating absolution, as was the case in the Code of 1917 (Can. 1379). However, from the point of view of the law on sacraments, the confessor's action is an act simulating a sacramental action. In this case, the priest is *ipso jure* deprived of the authorization to hear confessions, and the absolution granted is invalid and apparent. Therefore, it is a qualified form of the crime mentioned in Can. 1379 § 1, n. 2 CIC/83 [Szyrczyk 2003, 100].

The penalty for the crime in question, which the confessor is subject to by law, contains two elements. The first of them is the above-mentioned loss of the *ipso iure* right to exercise the power of absolution in relation to the sin of an accomplice in a sin against the sixth commandment of the Decalogue. The only circumstance that would authorize this will be danger of death in which the penitent-accomplice finds themselves. The second is falling into excommunication *latae sententiae*, release from which is reserved to the Holy See (Can. 1331 CIC/83, *De delictis reservatis*, Article 4 § 1, n. 1).

At this point, we should also consider the question posed in the doctrine. Is absolution given by a confessor-accomplice valid in relation to other sins confessed together with the common sin against the sixth commandment of the Decalogue in the same confession? In response to this question, two schools of thought clash. One, based on the old criterion of *ratio peccati*, believes that the lack of the right to absolution covers only the common sin *contra sextum* and does not extend to other confessed sins [Woestman 2004, 269; Cito 2008b, 324]. The second group of canonists believes that by maintaining the criterion of indivisibility of absolution, the confessor loses the right to absolution as such, covering all confessed sins [Pighin 2014, 385].

V.G. Dhas, taking into account the norm of strict interpretation from Can. 18 CIC/83 favors the first school. D. Borek, however, is of the opinion that due to the principle of the indivisible nature of absolution, B. F. Pighin's position should be deemed right [Dhas 2019, 114; Borek 2019, 213].

Considering the last issue, namely, circumstances other than the danger of death that make a priest not subject to the penal sanction provided for in Can. 1384 CIC/83, in conjunction with Can. 1324 § 3 CIC/83, those not mentioned above should be enumerated: previous absolution of an accomplice in a sin by another priest;<sup>10</sup> an unintentional state of mental

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<sup>10</sup> One cannot agree with the opinion of C. Dezzuto, who believes that such absolution would also be invalid, because the fact of complicity in sin is objective, regardless of its absolution



confusion in the confessor; hearing an accomplice's confession without giving absolution.

To properly assess the severity of the violation if the accusation was tried in an external forum, it is also important to determine the canonical status of the person being absolved. Aggravating circumstances may be verified, whether due to adultery in the case of a married person, sacrilege in the case of a clergyman, or great evil in the case of a consecrated person or a seminarian [Commentz 2011, 21-22].

### 3. PROCEDURAL DIFFICULTIES

Judging the crime of absolving an accomplice in a sin against the sixth commandment of the Decalogue is not easy. This is related to the secret nature of the sacrament of penance. Absolution is performed in the *forum internum*. Therefore, although the crime in question is qualified among *delicta graviora*, reserved for the Dicastery for the Doctrine of the Faith (*De delictis reservatis*, Article 4 § 1, n. 1 and n. 4), in practice, it is rarely considered by it, and proving it is extremely difficult. In order to obtain relief from the penalty of excommunication *latae sententiae*, it will be necessary to apply to the Apostolic Penitentiary (Apostolic Constitution *Praedicate Evangelium*, Article 191).

Proceedings in matters related to the sacrament of penance are run at risk of violating the sacramental seal of confession. They are also not conducive to ensuring the accused's right to defense. It does not seem that the disposition of Article 4 § 2 of *De delictis reservatis*, having been moved from Article 24 of the earlier version of the norms, has removed procedural difficulties, even though it included the penitent among the denunciating entities, specifying that the accuser does not always have to be identical with the penitent [Visioli 2023, 10].

In the new disposition, the legislator sets procedural requirements applicable in cases involving crimes related to the sacrament of penance. There is a prohibition binding upon all persons to disclose the identity of the accuser or penitent to the accused and his defense counsel, unless the accuser or penitent expressly consents to it. Moreover, when conducting the proceedings, the credibility of the accuser should be assessed very carefully and any risk of violating the seal of confession must absolutely be avoided, ensuring the accused's right to defense (*De delictis reservatis*, Article 4 § 2).

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[Dezzuto 2014, 62]. According to the current doctrine, the inability to absolve an accomplice in a sin against the sixth commandment of the Decalogue is not permanent, provided that the penitent has previously obtained absolution from another priest [Dhas 2019, 114].

In the practical instructions given by the Dicastery for the Doctrine of the Faith to delegates conducting trials, attention is drawn to the admission of witnesses who are free from hostility towards the accused; people testifying are to be warned not to reveal the penitent's data, the type of sin, or the time and place of its commission, and in the event of any disclosure, a ban is imposed on recording such information. Such indications do not facilitate the proceedings, in which, in fact, the only question in the case of an *in actu confessionis* crime is the one concerning the fact of the confession. Questions cannot be asked about the fact of granting or not granting absolution, since this would be a betrayal of the seal of confession. The fact of granting absolution or its refusal on the part of the confessor is also covered by the seal of confession [Montini 1997, 226-27; Syryjczyk 2003, 128].

### CONCLUSIONS

Protecting the sanctity of the sacrament of penance is intended to guarantee its dignified and valid administration. It is also the responsibility of the church authorities to safeguard the deposit given to the Church by its Founder – Jesus Christ. Such a delicate form of exercising service towards the faithful requires restrictive norms that should prevent possible abuses on the part of ministers, but also on the part of penitents.

One of the most serious canonical crimes against the holiness of the sacrament of penance is the absolution of an accomplice in a sin against the sixth commandment of the Decalogue. A confessor who has previously committed an immoral act with a penitent, now acting intentionally and with full awareness when absolving them, tries to hide this fact from the Church community, and at the same time exposes himself and, above all, the penitent to moral harm and distortion of conscience and may thereby cause recidivism.

The key issue in determining guilt, and therefore in proving and punishing a crime, is establishing complicity in committing it. It is not an easy task, in particular with regard to determining the ability of some people to consent to participation in committing a sin. Difficulties also arise in procedural evidence as the crime of absolving an accomplice in a sin of impurity is related to the *forum internum*, which is widely protected under church law.

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