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## **Punishable Offenses Leading to the Loss of Clerical Status According to The Code of Canon Law Currently in Force**

1. Prolegomena – 2. Punishable offenses by expulsion from the clerical state – 3. Final conclusions

### **1. Prolegomena**

According to can. 290 of the Code of Canon Law of 1983 (CIC/83), there are three ways of losing clerical status: 1° by a judicial sentence or administrative decree, which declares the invalidity of sacred ordination; 2° by a penalty of dismissal legitimately imposed; 3° by rescript of the Apostolic See.

The issue of penal loss of clerical status in scientific reflection is not a new topic<sup>1</sup>. However, due to the evolution of criminal law, which defines crimes punishable

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<sup>1</sup> For example: Marek Stokłosa. 2015. *Utrata stanu duchownego w aktualnym prawodawstwie Kościoła łacińskiego*. Warszawa: Wydawnictwo UKSW; Michał Aniszewski. 2016. “Kara wydalenia ze stanu duchownego”. *Kościół i Prawo* 5(18) (1): 247–263; Grzegorz Leszczyński. 2016. “Utrata stanu duchownego w świetle KPK z 1983 r.”. *Łódzkie Studia Teologiczne* 25 (2): 103–115; Tomasz Rakoczy. 2010. “Karne usunięcie ze stanu duchownego w rozumieniu Kodeksu prawa kanonicznego z 25 stycznia 1983 i listu Kongregacji ds. Duchowieństwa z 18 kwietnia 2009”. *Roczniki Wydziału Nauk Prawnych i Ekonomicznych KUL* 6 (1): 37–58; Karolina Rudzińska. 2010. “Kara wydalenia ze stanu duchownego”. *Prawo Kanoniczne* 53 (1–2): 203–223; Marta Wronowska. 2014. “Przyczyny i procedura wydalenia ze stanu duchownego”. *Studia Elckie* 16 (4): 495–522; Brendan Daly. 2020. “Dismissal from the Clerical State”. *The Canonist* 11 (1): 31–54. Gregory Ingles. 1999. “Dismissal from the Clerical State. An Examination of the Penal Process”. *Studia Canonica* 33: 169–212; Federico R. Aznar Gil. 2010. “La expulsión del estado clerical por procedimiento administrativo”. *Revista Española de Derecho Canónico*: 67, 255–294; Davide Cito. 2011. “La pérdida del estado clerical ex

by a criminal sanction consisting in loss of membership of the clergy, taking up this topic is justified. The direct reason for such action is the apostolic constitution of the Pope Francis *Pascite gregem Dei* (PGD) of 23<sup>rd</sup> May 2021, which contains the reformed and currently applicable content of Book VI CIC/83, devoted to sanctions in the Church<sup>2</sup>. The above-mentioned papal document expands the scope of crimes for which it is possible to punish with a lifelong expiatory penalty *dimissio de statu clericali*, referred to in can. 1336 § 5 CIC/83. The aim of this study is to present crimes punishable by expulsion from the clerical state in the Code of Canon Law currently in force<sup>3</sup>.

As V. De Paolis notes in relation to the concept of crime that CIC/83 in Book VI consistently adheres to the principle according to which the legislator does not define concepts, leaving this task to scholars who, however, do not create them themselves, but derive them from legal texts regulations referring to the already existing tradition<sup>4</sup>. The definition of a crime is contained in the Code of Canon Law of 1917 (CIC/17), which in can. 2195 § 1 states:

Can. 2195 § 1. In canon law, a crime is understood to mean an external and morally responsible violation of the law, to which a canonical sanction of at least indefinite duration is attached<sup>5</sup>.

This definition is constructed from a formal point of view, emphasizing crime as a violation of a legal norm. In turn, from the material point of view, the defini-

officio ante las actuales urgencias pastorales”. *Ius Canonicum* 51: 69–101; Luis Navarro. 2012. “La dimissione dallo stato clericale in via amministrativa”. *Ius Ecclesiae* 24: 609–622.

<sup>2</sup> Franciscus. 2021. *Constitutio Apostolica Pascite Gregem Dei qua liber VI Codicis Iuris Canonici reformatur*. Città del Vaticano: Libreria Editrice Vaticana.

<sup>3</sup> The presentation of individual crimes, carried out within the limited framework of a scientific article, is not aimed at their exhaustive analysis (which would go far beyond the above-mentioned scope), but rather is aimed at a synthetic presentation of the problem.

<sup>4</sup> Velasio De Paolis. 1996<sup>2</sup>. *Delitto (Delictum)*. In *Nuovo Dizionario di Diritto Canonico*. Ed. Carlos Corral Salvador, Velasio de Paolis, Giancarlo Ghirlanda, 336. Milano: San Paolo. In the canonical tradition preceding CIC/17, various names were used to describe criminal acts, such as: *crimen, delictum, flagitium, exesus, maleficium, pactum publicum*. These are terms taken from Roman law and their meaning is identical. Cf. Jerzy Syryjczyk. 2008. *Sankcje w Kościele. Część ogólna, komentarz*. Warszawa: Wydawnictwo UKSW, 98. CIC/17 used two terms – *crimen* and *delictum*. In CIC/83 and PGD, with three exceptions, the legislator limits itself to using the concept of *delictum*. J. Krukowski. 2022. *Przestępstwa i kary w ogólności*. In Krukowski Józef, Kaleta Paweł. *Komentarz do Kodeksu prawa kanonicznego*. Vol. IV/2, book 6. *Sankcje karne w Kościele zreformowane przez papieża Franciszka*. Poznań: Pallottinum, 49. The above-mentioned exceptions are found in CIC/83, can. 982, 1078 §2, n. 2 and tit. IV, part II, book VI.

<sup>5</sup> CIC/17, can. 2195 § 1: “Nomine delicti, iure ecclesiastico, intelligitur externa et moraliter imputabilis legis violatio cui addita sit sanctio canonica saltem indeterminata”.

tion of crime emphasizes its harm to the community – in this approach, harm is a material element of the crime, constituting an obstacle to the faithful in striving for the common spiritual good, ultimately understood as eternal salvation<sup>6</sup>. In can. 1321–1323 PGD, the legislator defines the essential elements of the crime<sup>7</sup>.

## 2. Punishable offenses by expulsion from the clerical state

### 2.1. Apostasy, heresy, and schism

The legislator in can. 1364 §§ 1–2 PGD establishes sanctions for the crimes of apostasy, heresy, and schism. They are as follows:

§ 1. An apostate from the faith, a heretic or a schismatic incurs a *latae sententiae* excommunication, without prejudice to the provision of can. 194 § 1 n. 2; he or she may also be punished with the penalties mentioned in can. 1336 §§ 2–4.

§ 2. If a long-standing contempt or the gravity of scandal calls for it, other penalties may be added, not excluding dismissal from the clerical state<sup>8</sup>.

The crimes listed in the canon are crimes against faith. Regarding can. 1364 CIC/83, this canon in the PGD contains two modifications – additional criminal sanctions included in can. 1336 §§ 2–4 (referred to in can. 1364 § 1 PGD) covers not only the cleric, but every perpetrator. In addition, a clergyman can also be deprived of the authorization to preach or hear confessions and be deprived of all or part of his church remuneration. The offenses referred to in can. 1364 PGD – pursuant to the amended *Normae de gravioribus delictis* (NGD) of 2001 – *Normae de delictis reservatis* (NDR) of 2010 were reserved to the Congregation (today Dicastery) for the Doctrine of the Faith<sup>9</sup>. The three crimes mentioned are defined in can. 751 CIC/83, which states:

<sup>6</sup> Cf. Krukowski. 2022. *Przestępstwa i kary*, 49. It should be noted that an offense arises not only from the fact of violating a criminal statute, but also a criminal order. This is expressed by CIC/17 in can. 2195 § 2: “Nisi ex adiunctis aliud appareat, quae dicuntur de delictis, applicantur etiam violationibus praecepti cui poenalis sanctio adnexa sit”.

<sup>7</sup> The essential elements of a crime can be divided into objective elements (material element and formal element) and subjective elements (insanity, responsibility, and guilt).

<sup>8</sup> Please note that the valid text of the Code is that expressed in Latin.

<sup>9</sup> See. art. 2 § 1 NDR.

Can. 751. Heresy is the obstinate denial or obstinate doubt after the reception of baptism of some truth which is to be believed by divine and Catholic faith; apostasy is the total repudiation of the Christian faith; schism is the refusal of submission to the Supreme Pontiff or of communion with the members of the Church subject to him.

Apostasy, heresy, and schism are among the most serious crimes in the Church, violating its faith and unity<sup>10</sup>. Those who commit them automatically incur excommunication *latae sententiae*, from which only the Apostolic See can release them. Additionally, if a criminal holds an ecclesiastical office, according to can. 194 § 1, 2° CIC/83 it can be revoked by operation of law itself<sup>11</sup>. M. Stokłosa notes that a clergyman may be punished more severely than a lay person. The expiatory penalties mentioned in the canon may be added to it can. 1336 § 1, n. 1–3 CIC/83, “and – in the case of long-term obstinacy or great scandal – he may be punished with other expiatory penalties, including dismissal from the clerical state”<sup>12</sup>.

## 2.2. Physical violence against the Bishop of Rome

Physical violence against the pope was sanctioned in can. 1370 PGD, opening the category of crimes against ecclesiastical authority and crimes related to the performance of ecclesiastical tasks. The legislator lists in this canon (see §1–3) four categories of persons who may be affected by violence – (1) the Bishop of Rome, (2) a bishop, (3) a clergyman or religious, and (4) another of Christ’s faithful. The penal sanction as a consequence of physical violence against the Pope is mentioned in § 1 of the same canon:

§ 1. A person who uses physical force against the Roman Pontiff incurs a *latae sententiae* excommunication reserved to the Apostolic See; if the offender is a cleric, another penalty, not excluding dismissal from the clerical state, may be added according to the gravity of the crime.

<sup>10</sup> For a more extensive discussion of these three crimes, see. Dariusz Borek. 2014. “Przestępstwa przeciwko wierze w normach «de delictis reservatis» z 2010 roku”. *Prawo Kanoniczne* 57 (3): 107–111. See. also Dariusz Borek. 2019. *Przestępstwa zastrzeżone dla Kongregacji nauki Wiary (normy materialne i proceduralne)*. Tarnów: Biblos, 48–60.

<sup>11</sup> Stokłosa. 2015. *Utrata stanu duchownego*, 112.

<sup>12</sup> Stokłosa. 2015. *Utrata stanu duchownego*, 112. All quotations from Polish have been translated into English to facilitate the reading.

For a crime to occur, it is necessary to use physical violence (and not, for example, verbal or emotional violence). It may violate personal freedom (e.g. imprisonment, abduction), bodily integrity (e.g. beating, injury) or a person's dignity (e.g. spitting, throwing mud or paint). By its nature, physical violence is external violence, although it may happen that the crime is not of a public nature<sup>13</sup>. Due to the fact that the Pope is the subject of the highest authority in the Church and at the same time the foundation of unity, an active insult to his person undermines his authority and causes general scandal, especially when it is committed by a clergyman. Only the Holy See can assign a *latae sententiae* excommunication incurred by a criminal<sup>14</sup>.

### 2.3. Attempting to administer the sacrament of ordination to a woman

The crime in question belongs to the category of crimes against sacraments. The penal sanction provided for them is found in can. 1379 § 3 PGD and reads as follows:

Can. 1379 § 3. Both a person who attempts to confer a sacred order on a woman, and the woman who attempts to receive the sacred order, incur a *latae sententiae* excommunication reserved to the Apostolic See; a cleric, moreover, may be punished by dismissal from the clerical state.

The form of offense in question was reserved for the Dicastery for the Doctrine of the Faith (see Article 5 of the NDR). D. Borek correctly notes that in CIC/83, the Code of Canons of the Eastern Churches of 1990 (CCEO/90), and the NGD of 2001 do not contain a similar disposition<sup>15</sup>. The crime in question occurs “only when there is an actual violation of the power/possibility of conferring the sacrament of ordination on a woman, i.e. a person who is incapable of receiving priestly ordination”<sup>16</sup>. The crime is committed both by those who attempt to give ordination

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<sup>13</sup> Paweł Kaleta. 2022. Poszczególne przestępstwa i ustanowione za nie kary. In Krukowski Józef, Kaleta Paweł. *Komentarz do Kodeksu prawa kanonicznego*. Vol. IV/2, book 6. *Sankcje karne w Kościele zreformowane przez papieża Franciszka*. Poznań: Pallottinum, 218.

<sup>14</sup> Jerzy Syryjczyk. 2003. *Kanoniczne prawo karne, część szczególna*. Warszawa: Wydawnictwo UKSW, 64.

<sup>15</sup> Dariusz Borek, 2017. “Sacramentorum sanctitatis tutela w aktualnie obowiązującym kanonicznym prawie karnym (Sakrament spowiedzi i święceń kapłańskich)”. *Symposium* 21(32) (1): 186.

<sup>16</sup> Borek. 2019. *Przestępstwa zastrzeżone*, 107. The following documents talk about women's inability to be ordained priests: Congregatio pro Doctrina Fidei. 1976. *Declaratio* (15.10.1976). AAS 1977 (69): 98–116; Ioannes Paulus II. 1994. *Ordinatio sacerdotalis. Epistola apostolica de sacerdo-*

(both clergy and lay people) and by the woman who tries to accept it. The penal sanction provides for the penalty of excommunication *latae sententiae*, taken by the Holy See, for both participants of the crime. Moreover, for a cleric can. 1379 § 3 provides for a possible additional expiatory penalty in the form of expulsion from the clerical state<sup>17</sup>.

## 2.4. Abandoning or taking or keeping consecrated species for sacrilegious purposes

The presented crime belongs to crimes against the sacraments. It was included in can. 1382 § 1 PGD as follows:

Can. 1382 § 1. One who throws away the consecrated species or, for a sacrilegious purpose, takes them away or keeps them, incurs a *latae sententiae* excommunication reserved to the Apostolic See; a cleric, moreover, may be punished with some other penalty, not excluding dismissal from the clerical state.

The profanation of consecrated figures referred to here may involve abandoning them (*abiectio*), taking them away (*abductio*) or keeping them (*retentio*)<sup>18</sup>. The first of these three activities – abandonment – should be understood in a very broad sense, as D. Borek explains: “According to the intention of the Pontifical Council for the Interpretation of Statutory Texts, the word *abiecit* used here means *quamlibet actionem Sacras Species voluntarie et graviter despicientem*, and therefore any voluntary act committed with great contempt towards the Sacred Species”<sup>19</sup>. The second activity – taking – involves taking out the consecrated figures from the place where they are stored and taking them to another place that is not intended for this purpose. However, an appropriate purpose is

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*tali ordinatione viris tantum reservanda*. AAS 86 (1994): 545–548; Congregatio pro Doctrina Fidei. 1995. *Responsio ad propositum dubium* (28.10.1995). AAS 87 (1995): 1114.

<sup>17</sup> As specifies by P. Kaleta: “Zastosowanie łacińskiego przysłówka *ponadto* (łac. *praeterea*) nie oznacza, że wydalenie ze stanu duchownego jest alternatywną, ale dodatkową, choć fakultatywną karą dla duchownych (see. art. 5 §3 NGD). Przez duchownych należy rozumieć tych, którzy ważnie przyjęli sakrament święceń, a nie kobietę, która usiłowała go przyjąć (kan. 1379 §3)”. Kaleta. 2022. *Poszczególne przestępstwa*, 265.

<sup>18</sup> See. Dariusz Borek. 2012. “Przestępstwa przeciwko Sakramentom w Normach De Delictis Reservatis” z 2010 roku”. *Prawo Kanoniczne* 55 (4): 115–120.

<sup>19</sup> Borek. 2019. *Przestępstwa zastrzeżone*, 64. Here we can mention such activities as: throwing on the ground/scattering of it, throwing into a fire, a latrine, a garbage dump, which is accompanied by contempt, lack of respect, malice, hatred towards God, etc. The category of abandonment also includes trampling on consecrated figures, spitting, spitting or feeding to animals. Borek. 2019. *Przestępstwa zastrzeżone*, 64.

needed for such an action to be classified as a criminal act – the NGD specifies it in the phrase in *sacrilegum finem* (for a sacrilegious purpose). Therefore, what is definitive here is not the act itself, but the intention to offend, to which the taking is intended to lead<sup>20</sup>. The last of the actions mentioned in can. 1382 § 1 – keeping – concerns the keeping of consecrated species outside the tabernacle for sacrilegious purposes<sup>21</sup>.

Committing the crime referred to in can. 1382 § 1, entails excommunication *latae sententiae* assigned by the Apostolic See, regardless of whether the crime was committed secretly or publicly<sup>22</sup>. Since in the case of clergy committing desecration, it can be considered a particularly serious crime, and the legislator does not rule out punishing them with other penalties, including possible dismissal from the clerical state.

## 2.5. Consecrating one or both Eucharistic species for a sacrilegious purpose

Another crime against the Holy Eucharist is the consecration of the Eucharistic Species (one or two) during the Eucharistic celebration or outside it in *sacrilegum finem*<sup>23</sup>. The provision sanctioning this criminal act is included in can. 1382 § 2 PGD and reads as follows:

Can. 1382 § 2. A person guilty of consecrating for a sacrilegious purpose one element only or both elements within the Eucharistic celebration or outside it is to be punished according to the gravity of the offence, not excluding by dismissal from the clerical state.

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<sup>20</sup> Borek. 2019. *Przestępstwa zastrzeżone*, 62. A sacrilegious goal will be, for example, taking away consecrated figures in order to use them as objects of shameless, impious acts, in satanic and fortune-telling rituals, etc. Cf. Borek. 2019. *Przestępstwa zastrzeżone*, 62

<sup>21</sup> Borek. 2019. *Przestępstwa zastrzeżone*, 63. This may involve keeping the consecrated figures with you, in your pocket, in your purse, or at home. However, for a crime to occur, the detention must be aimed at a sacrilegious purpose. Borek. 2019. *Przestępstwa zastrzeżone*, 63

<sup>22</sup> This penalty should be declared if there is a requirement to comply with it in an external forum. Borek. 2019. *Przestępstwa zastrzeżone*, 66–67.

<sup>23</sup> To learn more about crimes against the Holy Eucharist, see. Dariusz Borek. 2016. “Sacramentorum sanctitatis tutela w aktualnie obowiązującym kanonicznym prawie karnym (Eucharystia)”. *Symposium* 20(31) (2): 41–72; Their synthetic presentation can be found in: Carlo Dezzuto. 2014. *Delicta reservata contro la fede e contro i sacramenti*. In *I delitti riservati alla Congregazione per la Dottrina della Fede*. Ed. Andrea D’Auria, Claudio Papale, 51–59. Roma: Urbaniana University Press.

This crime has not yet had its counterpart in either CIC/83 or CCEO/90<sup>24</sup>. D. Borek correctly states that the norms from 2001 “provided (...) the form of crime in question but defined it slightly differently – as the consecration for sacrilegious purposes of one form without the other during the Eucharistic celebration and as the consecration of both forms, but outside the Eucharistic celebration”<sup>25</sup>. The NDR document of 2010 in art. 3 § 2 modifies the content of this offense by introducing a criminal sanction. The perpetrator may only be a validly ordained clergyman<sup>26</sup>. After further changes of an editorial nature, within the scope of the legal norm contained in can. 1382 § 2 PGD includes the following four hypotheses, assuming a sacrilegious purpose: (1) consecration of one species during the Eucharistic celebration; (2) consecration of both species during the Eucharistic celebration; (3) consecration of one species outside the Eucharistic celebration; (4) consecration of both species outside the Eucharistic celebration. The essence of this crime is determined by its purposefulness – in *sacrilegum finem* – which is expressed as any intention to insult consecrated figures, motivated by contempt for their sanctity resulting from God’s institution<sup>27</sup>.

As in the case of the crime of abandoning or taking or keeping consecrated species for a sacrilegious purpose (can. 1382 § 1), also in the case of consecrating the Eucharistic species for a sacrilegious purpose, the clergyman committing it is committing a particularly grave crime. Hence, the legislator can deliver several different types of punishment “according to the gravity of the crime, including expulsion from the clerical state” (can. 1382 § 2).

## 2.6. Solicitation

The crime of solicitation is the first offense that involves the sacrament of penance, subject to the risk of expulsion from the clerical state. In can. 1385 PGD, the legislator states:

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<sup>24</sup> The prohibition of consecrating one or two Eucharistic species outside the Eucharistic celebration was indeed included in can. 927 CIC/83 – “Even in extreme necessity, it is absolutely forbidden to consecrate one species without the other or both species outside the Eucharistic celebration” – but it did not contain a criminal sanction.

<sup>25</sup> Borek. 2019. *Przestępstwa zastrzeżone*, 79.

<sup>26</sup> In the case of a lay person, the perpetrator would face an interdict *latae sententiae* (can. 1379 § 1, 1°) and would be deprived of office (art. 3 § 2 NDR).

<sup>27</sup> See: Kaleta. 2022. *Poszczególne przestępstwa*, 278–279; Rafał Zaleski. 2016. „Przestępstwo profanacji postaci eucharystycznych w kanonicznym prawie karnym”. *Roczniki Nauk Prawnych* 26 (4): 173–174.



Can. 1385. A priest who in confession, or on the occasion or under the pretext of confession, solicits a penitent to commit a sin against the sixth commandment of the Decalogue, is to be punished, according to the gravity of the offence, with suspension, prohibitions, and deprivations; in the more serious cases he is to be dismissed from the clerical state.

This provision corresponds to the regulation with the same content contained in can. 1387 CIC/83<sup>28</sup>. Solicitation is reserved to the Dicastery for the Doctrine of the Faith, falling within the scope of crimes classified as *delicta graviora*<sup>29</sup>. The criminal act in question consists of the confessor inciting the penitent to sin against the sixth commandment of the Decalogue<sup>30</sup>.

This may involve persuading, threatening, encouraging, stimulating through words, gestures, writing, and images. The inducement must be external – i.e. certain – in relation to facts (verifiable) and intentions (determining whether the facts expressed the will)<sup>31</sup>. As D. Borek explains: “A confessor who incites sin must have a determined will to break the rule, i.e. the crime must be committed intentionally. He must therefore know that it is a sin and still intend to induce the penitent to sin”<sup>32</sup>.

The legislator in Can. 1385 PGD lists the circumstances in which the crime of solicitation may occur:

- a) during confession (even when the confessor is not granted absolution, when the confession was interrupted, which could be caused, for example, by a surprised/astonished penitent);
- b) on the occasion of confession (before or after confession, when the penitent met the confessor in connection with the scheduled confession or asks for the confession);

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<sup>28</sup> The 1983 Code included the crime of solicitation in Title III, Book VI, defined as “Usurpation of ecclesiastical tasks and crimes in their performance”. In the reformed Book VI of the PGD, solicitation was also included in Title III, which deals with crimes against the sacraments.

<sup>29</sup> See. art. 3, 2° NGD and art. 4 § 1, 4° NDR.

<sup>30</sup> On violations of the sixth commandment, going beyond the sacrament of penance, see: Dariusz Borek. 2015. *Sextum Decalogi praeceptum w kanonicznym prawie karnym aktualnie obowiązującym*. Tarnów: Biblos.

<sup>31</sup> Borek. 2019. *Przestępstwa zastrzeżone*, 93.

<sup>32</sup> Borek. 2019. *Przestępstwa zastrzeżone*, 93.

- c) under the pretext of confession (arranging a confession by the confessor is only a pretext for inciting one to sin, even though the confession itself does not take place)<sup>33</sup>.

The “severity of the crime”, determining possible expulsion from the clerical state, is measured by the amount of damage, moral corruption, and scandal. The legislator expects the penalty of suspension, through various expiatory penalties, up to the most severe one – expulsion. These sanctions are mandatory *ferendae sententiae* penalties. The choice of a specific penalty (also one not provided for by the canon), depending on the severity of the offense, is left to the discretion of the judge or ordinary<sup>34</sup>.

## 2.7. Recording or maliciously disclosing information about confession

The second (next to solicitation) and the last crime regarding sacramental confession is the recording or malicious disclosure of it. The legislator in can. 1386 § 3 PGD decides whether:

Can. 1386 § 3. Without prejudice to the provisions of §§ 1 and 2, any person who by means of any technical device makes a recording of what is said by the priest or by the penitent in a sacramental confession, either real or simulated, or who divulges it through the means of social communication, is to be punished according to the gravity of the offence, not excluding, in the case of a cleric, by dismissal from the clerical state.

The above legal provision had no equivalent in CIC/83 but was included in the NDR of 2010<sup>35</sup>. The crime in question may take various forms – recording a confession alone, distributing a recording of a confession alone, or combined (recording + dissemination). The first and second cases are two different crimes that may

<sup>33</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 286.

<sup>34</sup> Borek. 2019. *Przestępstwa zastrzeżone*, 96; Velasio De Paolis. 1996<sup>2</sup>. “Sollecitazione, delitto di (*Delictum sollicitationis*)”. In *Nuovo Dizionario di Diritto Canonico*. Ed. Carlos Corral Salvador, Velasio de Paolis, Giancarlo Ghirlanda, 1010, Milano: San Paolo.

<sup>35</sup> See art. 4 § 2 NDR. Although this crime was not included in CIC/83, it was defined before coming into force in the 1983 Code in the declaration of the Congregation for the Doctrine of the Faith *De tuenda Sacramenti Paenitentiae dignitate* (23<sup>rd</sup> March 1973). After the entry into force of CIC/83, this declaration was repealed and then renewed by the decree of the same congregation *quo ad Paenitentiae sacramentum tuendum* (23/09/1988). For the act of profaning the sacrament of penance by recording and disseminating the content of confession, this document determined the penalty of excommunication *latae sententiae*.

have different perpetrators, while the third case involves one crime and one perpetrator. Each of these three variants also assumes the potential involvement of third parties<sup>36</sup>.

The phrase “without prejudice to the provisions of §§ 1 and 2”, opening the wording of Canon 1386 § 3, indicates the possibility of committing the crime of recording or disseminating in connection with a direct or indirect violation of the secrecy of confession. This applies to both the confessor and the penitent (also the translator and any other persons). Moreover, this crime applies to both true and fictitious confessions (confession of fictitious sins in order to provoke the confessor into a specific reaction for the purpose of later publication)<sup>37</sup>.

The act of recording involves recording the conversation that takes place during sacramental confession using any technical means (*quovis technico instrumento*) – e.g. a voice recorder or telephone. The fact of recording all or part of a confession constitutes a crime without the need to publish what was recorded<sup>38</sup>. The second hypothesis of the crime is the dissemination of the content of the confession – that is, what was previously recorded – in the media (television, radio, Internet, newspaper, etc.). P. Kaleta correctly notes that in this case the crime is also committed by those without whom the dissemination would not have occurred (publishers, journalists, editors, directors, etc.)<sup>39</sup>. As he adds later in his argument: “According to Can. 1329 § 2, only those accomplices without whose participation the crime of recording or disseminating sacramental confession through the means of social communication would be impossible – are subject to the criminal sanction *latae sententiae*”<sup>40</sup>.

The legislator decides that the perpetrator of the crime being analysed “should be punished according to the gravity of the crime”. In the case of a clergyman – due to the particularly delicate nature of the sacrament of penance and reconciliation of which he is the minister, and therefore a great act of moral corruption and scandal if he commits the violation in question – the penalty of expulsion from the clerical state is authorized.

<sup>36</sup> Borek. 2019. *Przestępstwa zastrzeżone*, 101; Velasio De Paolis, Davide Cito. 2008<sup>2</sup>. *Le sanzioni della Chiesa. Commento al Codice di Diritto Canonico, Libro VI*. Roma: Urbaniana University Press, 347.

<sup>37</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 292.

<sup>38</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 292. The motive for such action may be, for example, achieving certain benefits through blackmail or the desire to obtain evidence or circumstantial evidence from a prisoner’s confession. See: Stokłosa. 2015. *Utrata stanu duchownego*, 125.

<sup>39</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 292; Stokłosa. 2015. *Utrata stanu duchownego*, 125–126.

<sup>40</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 292.

## 2.8. Voluntary and unlawful abandonment of the sacred ministry for six months continuously

In the currently applicable text of Book VI of the Code of Canon Law (CIC), the disposition contained in can. 1392 PGD opens Title V concerning crimes against special obligations. Its content is as follows:

Can. 1392. A cleric who voluntarily and unlawfully abandons the sacred ministry, for six months continuously, with the intention of withdrawing himself from the competent Church authority, is to be punished, according to the gravity of the offence, with suspension or additionally with the penalties established in can. 1336 §§ 2–4, and in the more serious cases may be dismissed from the clerical state.

Canon 1392 PGD is a new provision that has no equivalent in previous legislation<sup>41</sup>. The purpose of this canon is to protect the sanctity of the ministry, the voluntary and unlawful abandonment of which is subject to criminal sanctions. Through the sacrament of Holy Orders, each clergyman is incardinated into a specific Church, an institute of consecrated life, a society of apostolic life or a personal prelature. Consequently, one cannot be a clergyman who is not subordinate to anyone. While exercising sacred ministry, a priest fulfils various tasks and duties that have been entrusted to him by his own Ordinary. Abandoning the sacred ministry should be considered a violation of respect and obedience to one's ordinary (see can. 273)<sup>42</sup>.

In defining the crime contained in can. 1392 PGD, the legislator indicated two motives for committing it – *voluntarie et illegitime* – voluntarily and illegally. Voluntariness is expressed as the freedom to make decisions, involving both the will and the intellect<sup>43</sup>. However, the use of the adjective “illegal” indicates an action “which sets the limits of legal regulations as a result of which a cleric may lose his clerical status (can. 290–291)”<sup>44</sup>.

<sup>41</sup> A certain reference to the canon can be made here: Can. 283 § 1 CIC/83: “Even if clerics do not have a residential office, they nevertheless are not to be absent from their diocese for a notable period of time, to be determined by particular law, without at least the presumed permission of their proper ordinary”.

<sup>42</sup> See: Kaleta. 2022. *Poszczególne przestępstwa*, 310–311.

<sup>43</sup> Voluntary abandonment therefore does not occur in the case of an external action, such as, for example, coercion (can. 219) or punitive expulsion from the clerical state (can. 290, 2°). See Kaleta. 2022. *Poszczególne przestępstwa*, 311.

<sup>44</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 311.

To effectively commit the crime of wilful and unlawful abandonment of the sacred ministry, this insubordination must have continued for six months continuously. According to Can. 201 § 1, continuous time does not allow any break in the clergy's failure to respond to requests from the competent ecclesiastical authority. Before initiating administrative proceedings, an undisciplined clergyman should be admonished to abandon his stubbornness and return to exercising his holy ministry. This warning is a condition for the valid imposition of the penalty of censorship (Can. 1347 § 1). If there is no reaction, the administrative proceedings itself to impose a penalty should only be initiated after these six continuous months have elapsed. Apart from the suspension and penalties mentioned in Can. 1336 §§ 2–4, in more serious cases the penalty of expulsion from the clerical state may be imposed<sup>45</sup>.

## 2.9. Attempting to marry

The provision contained in can. 1394 § 1 PGD, which sanctions an attempt to contract a marriage by a clergyman, partly repeats the disposition contained in can. 1394 § 1 of the Code of Criminal Procedure of 1983. The numbering and classification of the crime remained the same, but the penal sanction was modified – as P. Kaleta states, the penalty of expulsion from the clerical state has become optional and obligatory in the case when, after warning, a clergyman still causes moral corruption<sup>46</sup>. The legislator in can. 1394 PGD decides:

Can. 1394 § 1. A cleric who attempts marriage, even if only civilly, incurs a *latae sententiae* suspension, without prejudice to the provisions of can. 194 § 1 n. 3, and 694 § 1 n. 2. If, after warning, he has not reformed or continues to give scandal, he must be progressively punished by deprivations, or even by dismissal from the clerical state<sup>47</sup>.

The above canon is in connection with can. 277 § 1, obliging the clergy (deacons, priests, bishops) to celibacy<sup>48</sup>. In turn, in accordance with can. 1087, those who have

<sup>45</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 311–312.

<sup>46</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 313.

<sup>47</sup> Can. 194 § 1, 3<sup>o</sup>: “The following are removed from an ecclesiastical office by the law itself: a cleric who has attempted marriage even if only civilly.” Can. 694 § 1, 2<sup>o</sup>: “A member must be held as *ipso facto* dismissed from an institute who: has contracted marriage or attempted it, even only civilly”.

<sup>48</sup> As explains B.F. Pighin: “I chierici latini sono tenuti alla continenza perfetta e perpetua, e perciò anche al celibato, che è lo stato di non sposato. Si tratta di una legge puramente ecclesiastica, radicata nella tradizione fin dall'era antica del cristianesimo, pur con delle varianti nella sua formulazione

received holy orders attempt to contract a marriage invalidly, it does not result in any legal consequences. The phrase “even only civil” indicates that the attempt may also be made under civil law. Since the attempt itself is subject to a criminal sanction, such an attempt should be considered a completed crime<sup>49</sup>.

The legislator bestows a suspended penalty of *latae sententiae* as the first criminal sanction. In the absence of improvement, other expiatory penalties are bestowed, which should be imposed gradually (in an administrative or judicial process), up to expulsion from the clerical state<sup>50</sup>.

## 2.10. Concubinage

In the currently applicable text of Book VI CIC of the Code of Criminal Procedure, the penal sanction provided for the crime of concubinage is found in can. 1395 § 1 PGD, repeating the provision contained in can. 1395 § 1 CIC/83. The legislator decides whether:

Can. 1395 § 1. A cleric living in concubinage, other than in the case mentioned in can. 1394, and a cleric who continues in some other external sin against the sixth commandment of the Decalogue which causes scandal, is to be punished with suspension. To this, other penalties can progressively be added if after a warning he persists in the offence, until eventually he can be dismissed from the clerical state.

The concept of concubinage, which is crucial for understanding the crime in question, means a relationship between a woman and a man characterized by stability, in a marital manner, but without the legalization typical of a marriage, for example under civil law<sup>51</sup>. In the context of canon law, A. Calabrese defines concubinage as follows: “Il concubinato è la convivenza more uxorio di due persone di sesso diverso”<sup>52</sup>. At the same time, the author specifies: “Avere rapporti sessuali anche frequenti con la stessa persona, senza convivenza, non è concu-

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e soprattutto nella sua effettiva attuazione durante i secoli?”. Bruno Fabio Pighin. 2008. *Diritto penale canonico*. Venezia: Marcianum Press, 463.

<sup>49</sup> Syryjczyk. 2003. *Kanoniczne prawo karne*, 158.

<sup>50</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 316–317.

<sup>51</sup> Stanisław Paździor. 2022. Konkubinaty. *Encyklopedia katolicka*. Vol. 9. Lublin: TN KUL, 647.

<sup>52</sup> Antonio Calabrese. 2006<sup>3</sup>. *Diritto penale canonico*. Città del Vaticano: Libreria Editrice Vaticana, 334. Homosexual relationships are considered in terms of committing another external sin *contra sextum*. Kaleta. 2022. *Poszczególne przestępstwa*, 319.

binato”<sup>53</sup>. The crime of concubinage is therefore characterized by: (1) a lasting relationship, (2) of a sexual nature, (3) combined with the intention to continue in that relationship<sup>54</sup>.

Similarly to the crime of attempting to marry a clergyman, the crime of concubinage is based on the violation of the obligations of clergy resulting from the obligation to maintain celibacy<sup>55</sup>. The penal sanctions provided for continuing in concubinage begin with a suspended penalty of *ferendae sententiae*, preceded by an ineffective canonical admonition (cf. can. 1347 §§ 1–2). Continuing in the crime and the ineffectiveness of another warning may result in further penalties, up to removal from the clerical state<sup>56</sup>.

## 2.11. Other public crimes against the sixth commandment of the Decalogue

Contrary to can. 1395 § 1 PGD, which, as noted above, has not been modified compared to CIC/83, can. 1395 § 2 PGD, dealing with other public crimes *contra sextum*, but has undergone editorial transformations in relation to CIC/83<sup>57</sup> and in its current form reads as follows:

Can. 1395 § 2. A cleric who has offended in other ways against the sixth commandment of the Decalogue, if the offence was committed in public, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.

It should be noted that a constitutive element of the crime referred to in this paragraph is the fact that it is committed in public. P. Kaleta states that, unlike can. 1395 § 1 PGD, “these are crimes of opportunity, accidental *contra sextum Decalogi* committed in public”<sup>58</sup>. Explaining the meaning of the word “publicly”, J. Syryj-

<sup>53</sup> Calabrese. 2006<sup>3</sup>. *Diritto penale*, 334.

<sup>54</sup> Borek. 2015. *Sextum Decalogi praeceptum*, 61–62.

<sup>55</sup> Pighin. 2008. *Diritto penale*, 469–470. The issue of clerical concubinage was thoroughly researched in the doctoral thesis by S. Paglialunga, which was written at the Pontifical Gregorian University in Rome; see. Sara Paglialunga. 2017. *Il sanzionamento del sacerdote concubinario. Una norma a difesa dell'obbligo alla continenza (can. 1395 § 1)*. Roma: Pontificia Università Gregoriana.

<sup>56</sup> Syryjczyk. 2003. *Kanoniczne prawo karne*, 163.

<sup>57</sup> CIC/83 w can. 1395 § 2 listed four types of crimes. The wording of this canon was as follows: “A cleric who has offended in other ways against the sixth commandment of the Decalogue, if it involves the use of coercion or threats, either publicly or with a minor under the age of sixteen, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants”.

<sup>58</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 321.

czyk emphasizes that for this type of crime to exist, “it must be committed in the presence of a larger number of people or addressed to many recipients through the means of social communication or committed in a public place or place open to the public”<sup>59</sup>. Speaking about the subject of the discussed legal norm, defined as “another way of committing a crime”, P. Kaleta points to the wording contained in the *Vademecum* of the Dicastery of the Doctrine of the Faith of 5.06.2022,<sup>60</sup> where (in the context of an external sin *contra sextum* committed by a clergyman against a minor) in point 2 there is the following statement:

The category of this crime is very broad and may include, for example, sexual intercourse (with or without consent), sexual physical contact, exhibitionism, masturbation, production of pornographic materials, incitement to prostitution, conversations or propositions of a sexual nature, also conducted via means of communication<sup>61</sup>.

For any other public crime against the sixth commandment of the Decalogue, the legislator primarily bestows punishment described as “just penalties”. The plural referring to the application of just penalties allows the ordinary or judge to impose another penalty if the previous one was ineffective. Moreover, this formulation allows to protect the proportionality of the sanctions, while leaving freedom to impose other penalties, up to possible expulsion from the clerical state<sup>62</sup>.

## **2.12. Any other offense against the sixth commandment of the Decalogue involving violence, threats, or abuse of power.**

The penal sanction contained in can. 1395 § 3 PGD focuses on the circumstances surrounding the committing of a crime *contra sextum*. The legislator decides whether:

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<sup>59</sup> Syryjczyk. 2003. *Kanoniczne prawo karne*, 164. P. Kaleta defines a public place as “usually a place generally accessible to people, e.g. a school, hospital, theater, street, or church”; Kaleta. 2022. *Poszczególne przestępstwa*, 321.

<sup>60</sup> Cf. Kaleta. 2022. *Poszczególne przestępstwa*, 321.

<sup>61</sup> Dicastery of the Doctrine of the Faith. 2022. *Vademecum dotyczące wybranych kwestii proceduralnych w zakresie postępowania w przypadkach nadużyć seksualnych popełnianych przez duchownych wobec małoletnich. Wer. 2.0* (05.06.2022). [https://www.vatican.va/roman\\_curia/congregations/cfaith/ddf/rc\\_ddf\\_doc\\_20220605\\_vademecum-casi-abuso-2.0\\_pl.html](https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.0_pl.html).

<sup>62</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 322.



Can. 1395 § 3. A cleric who by force, threats or abuse of his authority commits an offence against the sixth commandment of the Decalogue or forces someone to perform or submit to sexual acts is to be punished with the same penalty as in § 2.

Hypotheses of committing a crime against the sixth commandment of the Decalogue by means of coercion or threat have already appeared in can. 1395 § 2 CIC/83 (see above). In 1395 § 3 PGD, the legislator also adds abuse of power and coercion, thus enumerating four circumstances of the crime *contra sextum*.

Violence means acting against the will of another person when he or she does not consent to a given action (or when that person is unable to express this will/consent due to being a child, mentally disabled, intoxicated with psychoactive substances, etc.). We are talking about such criminal activities as rape, paedophilia, and sexual harassment<sup>63</sup>.

The second group of crime circumstances in the scope of demands covering other crimes against the sixth commandment of the Decalogue are threats. A possible refusal to meet the demands may be related to suffering damage announced by the clergy, e.g. loss of job, refusal to employ, omission from promotions or bonuses, transfer to another position, defamation, etc. The only motive for submitting to the perpetrator is the victim's desire to avoid harm. or loss of any right<sup>64</sup>.

The third group of crimes is related to abuse of power. This is a violation of the superior-subordinate relationship; a clergyman committing a crime has, to some extent, power over the victim who is subject to him. An example of such a relationship may be the relationship between a seminar moderator and a seminarian or a teacher and a student. The victim is forced to submit to the will of the clergyman, who intends to commit a *contra sextum* offense, out of fear resulting from the nature of the relationship between them<sup>65</sup>.

Coercion determines the fourth and last group of circumstances accompanying other crimes against the sixth commandment of the Decalogue. Coercion here is understood as "forcing someone to perform sexual acts or to submit to such acts"<sup>66</sup>.

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<sup>63</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 323; Por. Stokłosa. 2015. *Utrata stanu duchownego*, 45–46. Stokłosa correctly notes that all sexual violence is currently punished very severely in state penal systems, although their legislation does not invoke the sixth commandment of the Decalogue. See. Stokłosa. 2015. *Utrata stanu duchownego*, 46.

<sup>64</sup> Stokłosa. 2015. *Utrata stanu duchownego*, 46

<sup>65</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 323.

<sup>66</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 323.

As for the criminal sanctions provided for by the legislator for the crimes listed in can. 1395 § 3 PGD, they are the same as in the case of penalties provided for other crimes *contra sextum* contained in can. 1395 § 2 PGD (see above).

### 2.13. Murder

Another crime punishable by expulsion from the clerical state is murder. The legislator places the criminal sanction for this act in can. 1397 § 1 PGD, opening Title VI of Book VI, which is devoted to crimes against human life, dignity, and freedom. The content of this canon is as follows:

Can. 1397 § 1. One who commits homicide, or who by force or by fraud abducts, imprisons, mutilates, or gravely wounds a person, is to be punished, according to the gravity of the offence, with the penalties mentioned in can. 1336, §§ 2–4. In the case of the homicide of one of those persons mentioned in can. 1370, the offender is punished with the penalties prescribed there and also in § 3 of this canon<sup>67</sup>.

Content of can. 1397 § 1 PGD is a partial repetition of can. 1397 § 1 CIC/83. The penal sanction in the event of a murder committed by a clergyman has been changed, enabling him to be expelled from the clerical state.

The Latin phrase *qui homicidium patrat* indicates the intentional taking of another person's life. This is about death caused directly and intentionally by a human being, and not about loss of life due to natural causes<sup>68</sup>. Murder is one of the most serious sins<sup>69</sup>.

The crime of murder is sanctioned by the penalties *ferendae sententiae* contained in can. 1336 §§ 2–4. The judge has some discretion here in selecting the appropriate punishment depending on the severity of the crime. In the case of the murder of persons mentioned in can. 1370, the perpetrator shall be subject to the appropriate penalties provided therein; for the murder of the Pope incurs excom-

<sup>67</sup> The provision contained in can. 1397 § 1 lists three types of crimes – murder, kidnapping, and bodily mutilation. Since the penalty of expulsion from the clerical state is only murder, our analysis will be limited to this criminal act.

<sup>68</sup> Pighin. 2008. *Diritto penale*, 497.

<sup>69</sup> In the encyclical *Evangelium vitae*, John Paul II states: “In view of the gradual blurring of the awareness in consciences and in society that the direct taking of the life of any innocent human being, especially at the beginning and at the end of his or her existence, is an absolute and grave moral offense, the Magisterium of the Church has intensified its actions in defense of the sanctity and inviolability of human life” (EV 57). In turn, the Catechism of the Catholic Church (CCC) states: “The murderer and those who willingly cooperate in the murder commit a sin that cries to heaven for vengeance” (CCC 2268).

munication *latae sententiae* reserved to the Apostolic See (§ 1); for the murder of a bishop, he imposes a *latae sententiae* interdict, and if he is a clergyman, also a *latae sententiae* suspension (§ 2); for the murder of a cleric, monk or other faithful out of contempt for the faith, the Church, ecclesiastical authority or service, he should be punished with a just penalty (§ 3). Moreover, if a cleric commits one of these murders, he is also subject to the penalty of expulsion from the clerical state (Can. 1397 § 3 PGD<sup>70</sup>).

## 2.14. Abortion

The second crime against life, apart from murder, punishable by expulsion from the clerical state, is abortion. The penal sanction for this criminal act was placed in the same canon as murder (Can. 1397 § 1 PGD), including two subsequent paragraphs:

§ 2. A person who actually procures an abortion incurs a *latae sententiae* excommunication.

§ 3. If offences dealt with in this canon are involved, in more serious cases the guilty cleric is to be dismissed from the clerical state<sup>71</sup>.

Can. 1397 § 2 PGD literally repeats the content of can. 1398 CIC/83. This provision protects the inviolability of human life from conception to birth<sup>72</sup>. The Pontifical Commission for the Authentic Interpretation of the CIC indicates that abortion involves not only the removal of a foetus from the mother's womb that is incapable of independent life, but also the killing of the foetus performed at any time and by any means from the moment of conception<sup>73</sup>. An abortion can be performed directly or indirectly. In the first

<sup>70</sup> Can. 1397 § 3 PGD: "If offences dealt with in this canon are involved, in more serious cases the guilty cleric is to be dismissed from the clerical state".

<sup>71</sup> Immediately after § 2 – dealing with abortion – we include § 3 because it supplements the criminal sanction with possible expulsion from the clerical state. In the case of § 1, which deals with murder, we did not place the third paragraph directly under it, because the first paragraph refers to it, thus indicating a direct connection with it.

<sup>72</sup> The Catechism of the Catholic Church states: "Human life, from the moment of conception, must be respected and protected absolutely. From the very first moment of his or her existence, a human being should be granted the rights of a person, including the inviolable right of every innocent being to life" (CCC 2270). In turn, in the encyclical *Evangelium vitae*, John Paul II states that "(...) termination of pregnancy – regardless of how it is carried out – the conscious and direct murder of a human being in the initial stage of his life, including the period between conception and birth" (EV 58).

<sup>73</sup> Pontifica Commissio Codici Iuris Canonici Authentice Interpretatio. 1988. *Responsiones ad proposita dubia* (23.05.1988). AAS 80(1988): 1818. Abortion is defined here as "fetus occisione quocumque modo et quocumque tempore a momento conceptionis procuratur".

case, abortion involves intentional action using strictly defined means and methods, which is always a crime. In the second case, abortion may take various forms, subject to different interpretations by the Church's criminal law<sup>74</sup>.

The crime of abortion is committed by both the participants of the procedure (e.g. the woman, the doctor) and those who are necessary to perform the procedure (e.g. the anaesthesiologist, the nurse assisting the doctor). An abortion is also committed by a woman who takes appropriate pharmacological agents intended to produce such an effect<sup>75</sup>. Speaking about the punishment foreseen by the legislator for this criminal act, J. Syryjczyk notes:

The penalty of excommunication (...) is imposed not only on the perpetrators *sensu stricto* referred to in can. 1329 § 1, but also all necessary participants in this crime (can. 1329 § 2). A necessary participant in a crime is the person without whose participation it would not have been committed. In the crime of abortion, this participation may be manifested in the form of moral complicity (e.g. incitement, blackmail, coercion) or in the form of aiding and abetting the crime (physical or moral)<sup>76</sup>.

Moreover, in § 3 of canon 1397 PGD, the legislator decides that if the perpetrator of the crime of abortion is a clergyman, he should be expelled from the clerical state<sup>77</sup>.

<sup>74</sup> Paulina Jabłońska. 2020. "Penalizacja aborcji w prawie kanonicznym i prawie świeckim" *Perspectiva. Legnickie Studia Teologiczno-Historyczne* 19(37) (2) : 34. The author gives the following examples of differentiated assessment of indirect abortion: "An action by which abortion becomes a means to achieve a positive goal regarding the mother's health is therefore prohibited. Action aimed at saving the mother's health is permitted if abortion does not become a means, but only a consequence of the treatment undertaken. In this situation, neither the doctor nor the mother imposes the penalty of excommunication because their intention was not to perform an abortion". Jabłońska. 2020. "Penalizacja aborcji", 34.

<sup>75</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 323.

<sup>76</sup> Syryjczyk. 2003. *Kanoniczne prawo karne*, 178–179. According to can. 1323, 1°–2° a woman is not subject to punishment if she was under sixteen years of age at the time of the abortion or if she did not know that this act violated the penal law. In turn, can. 1324 § 1 PGD states that in certain cases (taxively enumerated) the punishment may be mitigated or replaced by penance. The penalty of excommunication prescribed for the crime of abortion is a *latae sententiae* penalty, which is not reserved to the Apostolic See. This fact makes it much easier to bear. According to CIC/83, those authorized to do so include, among others: a bishop (see can. 1355), a local ordinary (see can. 1355) or a hospital chaplain (see can. 566). Moreover, in a letter of September 1, 2015 (Extraordinary Year of Divine Mercy), Pope Francis authorized all priests to absolve the sin of abortion. See. *Lettera del Santo Padre Francesco con la quale si concede l'indulgenza in occasione del Giubileo Straordinario della Misericordia*, [https://www.vatican.va/content/francesco/it/letters/2015/documents/papa-francesco\\_20150901\\_lettera-indulgenza-giubileo-misericordia.html](https://www.vatican.va/content/francesco/it/letters/2015/documents/papa-francesco_20150901_lettera-indulgenza-giubileo-misericordia.html) (also available in Polish).

<sup>77</sup> P. Kaleta points out that the use of the imperative *dimitatur* in the Latin text "means the obligation to be expelled from the clerical state". Kaleta. 2022. *Poszczególne przestępstwa*, 333.

## 2.15. Sexual abuse against minors and their equivalent<sup>78</sup>

Can. 1398 PGD was entirely devoted to sexual abuse of minors and their equivalent. The provision contained in § 1, 1° of the same canon – sanctioning paedophilia – refers in its wording to can. 1395 § 2 CIC/83<sup>79</sup>. In the legislation currently in force, the legislator decides whether:

Can. 1398 § 1. A cleric is to be punished with deprivation of office and with other just penalties, not excluding, where the case calls for it, dismissal from the clerical state, if he:

1° commits an offence against the sixth commandment of the Decalogue with a minor or with a person who habitually has an imperfect use of reason or with one to whom the law recognises equal protection.

First, it is worth noting the differences in the upper age limit for discussions about paedophilia. According to the Polish Penal Code, it is the age of 15 – from that moment there is no longer a crime<sup>80</sup>. In CIC/83 this age was raised to 16. In turn, the 2001 NGD raised the age of a crime victim to 18 (which was confirmed in the 2010 NDR<sup>81</sup>). Therefore, it should be stated, following D. Borek, that “according to the currently applicable canon law, a crime will be any offense against the sixth commandment of the Decalogue committed by a priest with a person who is under 18 years of age”<sup>82</sup>. When it comes to defining paedophilia, P.-M. Gajda states

<sup>78</sup> To define the crime referred to in can. 1398 § 1, 1° PGD we use the term “abuse of minors and their equivalent” or “pedophilia” – which has a slightly narrower scope of meaning but is nevertheless accepted in the literature in relation to this provision.

<sup>79</sup> Can. 1395 – § 2: “A cleric who has otherwise transgressed the sixth commandment of the Decalogue, if it involves the use of coercion or threats, or publicly or with a minor under sixteen years of age, must be punished with just penalties, including, if necessary, dismissal from the clerical state”.

<sup>80</sup> In art. 200 § 1 of the Penal Code, the legislator states: “Whoever causes a minor under 15 years of age to engage in sexual intercourse or to undergo other sexual activity or to perform such an activity shall be subject to the penalty of imprisonment from one to ten years”. On the penalization of sexual behavior towards minors in Polish criminal law, see: Piotr Wojnicz. 2020. “Penalization of sexual acts against minors – considerations against the background of canon law and Polish criminal law”. *Civitas et Lex* 2 (26): 66–70.

<sup>81</sup> An offense against the sixth commandment of the Decalogue committed by a cleric with a minor and permanently incapable of using reason is a *delicta reservata* reserved for the Dicastery based on the Doctrine of the Faith. See. art. 6 § 1, 1° NDR; Dariusz Borek. 2014. „*Delicta graviora contra mores* w normach *De delictis reservatis z 2010 roku*”. *Prawo Kanoniczne* 57 (2): 53–69. Dariusz Mazurkiewicz. 2021. “Kanoniczne środki zapobiegawcze w przypadku oskarżeń o czyny contra sextum Decalogi praeceptum z osobami małoletnimi”. *Studia Paradyskie* 31: 143–161.

<sup>82</sup> Borek. 2015. *Sextum Decalogi praeceptum*, 77. Thus, the Latin term minor should be interpreted as a person under eighteen years of age. Cf. art. 1 § 2, and VELM. The legislator equates people who are permanently incapable of using reason and people to whom the law grants the same protec-

that it is “a sex drive towards children, a psychosexual tendency towards children and adolescents”<sup>83</sup>.

The victim’s potential consent to a sexual act (or lack thereof) has no impact on the occurrence of a crime. Similarly, her awareness or unawareness of what the perpetrator is doing plays no role here. The gender of the victim is also irrelevant. The objective elements of the crime are the age of the injured person as well as the sexual nature of the act (including sexual harassment)<sup>84</sup>. D. Borek clarifies that it does not matter whether it is a one-off or repeated act and whether “physical contact between the priest and the minor took place or not. It is sufficient that the action taken by the perpetrator indicates the intention to use a minor in order to obtain sexual arousal or sexual satisfaction”<sup>85</sup>.

For the crime of paedophilia committed by a clergyman, the legislator provides a wide range of penalties, starting with deprivation of office and other just penalties *ferendae sententiae* proportional to the gravity of the crime. As P. Kaleta states: “Deprivation of office is a specific penalty, which must be supplemented by other just penalties that are prescribed, including dismissal from the clerical state, if the given case so indicates”<sup>86</sup>.

## 2.16. Pornography concerning minors and their equivalent

The last two crimes punishable by expulsion from the clerical state are included in can. 1398 § 1, 2°–3° PGD. They are closely related to the above-mentioned crime of sexual abuse against minors and those equivalent to them (can. 1398 § 1, 1°), as well as with each other, which is the reason for presenting them together under the above title (2.16.). All three crimes have been placed in one canon and concern *contra sextum* offenses against the same group<sup>87</sup>. In can. 1398 § 1, 2°–3° PGD, the legislator provides that:

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tion (e.g. people with physical disabilities, the sick, who have a limited ability and will, to understand, or express opposition). Cf. art. 1 § 2, b VELM. Zob. Borek. 2019. *Przestępstwa zastrzeżone*, 114.

<sup>83</sup> Piotr Mieczysław Gajda. 2008. *Sankcje karne w kościele w świetle kodeksu prawa kanonicznego Jana Pawła II oraz późniejszych zmian i uzupełnień. Studium kanoniczno-pastoralne*. Tarnów 2008: Biblos, 169. See. “Annex 2” included in the same publication, which the author devotes to pedophilia, presenting pedophilia as a sexual deviation, pedophilia in the context of priests and selected statements of the Holy See about pedophilia. (pp. 169–174).

<sup>84</sup> Syryjczyk. 2003. *Kanoniczne prawo karne*, 165–166.

<sup>85</sup> Borek. 2015. *Sextum Decalogi praeceptum*, 79.

<sup>86</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 336.

<sup>87</sup> 2°, 3° unlike in 1° does not mention a person “to whom the law accords the same protection” (as minors and persons with limited use of reason).

Can. 1398 § 1. A cleric is to be punished with deprivation of office and with other just penalties, not excluding, where the case calls for it, dismissal from the clerical state, if he:

2° grooms or induces a minor or a person who habitually has an imperfect use of reason or one to whom the law recognises equal protection to expose himself or herself pornographically or to take part in pornographic exhibitions, whether real or simulated;

3° immorally acquires, retains, exhibits or distributes, in whatever manner and by whatever technology, pornographic images of minors or of persons who habitually have an imperfect use of reason.

The definition of child pornography can be found in Art. 1 § 2 point “c” of the document of Pope Francis *Vos estis lux mundi* (VELM) from 2019 and reads as follows: “any depiction of a minor, regardless of the means used, engaged in explicit sexual activities, real or simulated, and any depiction of the sexual organs of minors in primarily sexual purposes”<sup>88</sup>. This offense falls under the *delicta graviora* reserved by the Dicastery for the Doctrine of the Faith<sup>89</sup>.

The person committing the crime of pornography, according to the regulation contained in § 1, 2°, commits it by attempting to present a minor (and persons similar to him) in a pornographic manner by means of seduction or persuasion. This also includes participation in real or simulated (e.g. virtual pornography, graphic manipulation, digital processing, etc.<sup>90</sup>) pornographic performances. The minor is actively involved.

On the other hand, in § 1, 3°, minors and persons with permanently limited use of reason do not actively participate in the crime of pornography but are depicted in audiovisual materials resulting from the crime. The legislator states that the criminal act referred to in § 1, 3° may consist in acquisition of (by purchase, awareness of what is being purchased combined with the will to possess), storage of (result of acquisition, material at the disposal of the perpetrator with the knowledge of the

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<sup>88</sup> Regarding the understanding of the concept of “minors” as well as “their equal”, see above. When it comes to defining pornography as such, the Catechism of the Catholic Church gives the following definition: “Pornography consists of the withdrawal of sexual acts, real or simulated, from the intimacy of partners to deliberately show it to others. It insults chastity because it is a perversion of the marital act, the mutual intimate gift of spouses. It seriously violates the dignity of those who devote themselves to it (actors, sellers, the audience), because some of them become objects of primitive pleasure for others, and illicit earnings. It transports them all into an illusory world. Pornography is a grave sin. Civil authorities should prohibit the production and distribution of pornographic materials” (CCC 2354).

<sup>89</sup> See. art. 6 § 1, 2° NDR.

<sup>90</sup> Stokłosa. 2015. *Utrata stanu duchownego*, 144–145.



perpetrator), presenting of (intentional presentation of pornographic materials to other people) or dissemination of (the need to possess pornographic materials combined with their paid or free transmission to others)<sup>91</sup>. For a crime to be considered as having occurred, one of the four actions mentioned is enough.

P. Kaleta rightly summarizes by stating: “It should be emphasized that two separate contexts of committing the crime of child pornography, included in can. 1398 § 1, 2°–3°, have their own purpose – to protect the inalienable dignity of a minor, his or her inviolability and integrity in the physical, mental, and moral sphere”<sup>92</sup>.

Penal sanctions provided for the crimes referred to in can. 1398 § 1, 2°–3° PGD, are the same as in the case of can. 1398 § 1, 1° (see above)<sup>93</sup>.

### 3. Final conclusions

Based on the analysis of crimes punishable by expulsion from the clerical state contained in the currently applicable Code, it should be stated that the revision of Book VI of the CIC/83, carried out by Pope Francis with the apostolic constitution *Pascite gregem Dei* of 23<sup>rd</sup> May 2021, is not limited only to editorial changes among the existing provisions, reflected in the new organization of existing material, but makes significant modifications, expressed, among others, in expanding the range of criminal acts punishable by lifelong expiatory penalty *dimissio de statu clericali*, which are the subject of our study.

The presentation of individual crimes was not limited to detailing and discussing them but was done against an interpretive background determined by reflection on the issue of crime as such.

The considerations undertaken in this study in relation to the punishment of clergy reflect the living nature of the Church’s legislation, which, based on the achievements already made, is not closed to emerging new challenges in the moral and disciplinary space affecting clergy. Concern for their holiness goes hand in hand with the desire to protect members of the community of believers. This striving, in cases of serious violations, is aimed at proportionate punishment, including depriving the offender of his membership in the clergy.

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<sup>91</sup> Borek. 2015. *Sextum Decalogi praeceptum*, 117–118.

<sup>92</sup> Kaleta. 2022. *Poszczególne przestępstwa*, 339.

<sup>93</sup> Michał Deryło. 2018. “Le cause per la dimissione dallo stato clericale secondo le competenze della Congregazione per la Dottrina della Fede”. *Rocznik Teologii Katolickiej* 17 (3): 201–202.



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**Streszczenie: Przestępstwa zagrożone karną utratą stanu duchownego według Kodeksu Prawa Kanonicznego.** W niniejszym artykule autor przedstawia i analizuje przestępstwa zagrożone karną utratą stanu duchownego według Kodeksu Prawa Kanonicznego aktualnie obowiązującego. W części wprowadzającej autor wskazuje na zasadność podjęcia tego tematu, wynikającą z reformy prawa karnego, jaką przeprowadził papież Franciszek konstytucją apostolską *Pascite gregem Dei* z 23 maja 2021 r. Reforma ta poszerza katalog przestępstw zagrożonych dożywotnią karą ekspiacyjną *dimissio de statu clericali*. Autor podaje również rozumienie pojęcia przestępstwa w prawie kanonicznym, a następnie, w zasadniczej części studium, prezentuje i omawia poszczególne przestępstwa w kolejności odpowiadającej ich rozmieszczeniu w zreformowanej księdze VI KPK, poświęconej sankcjom karnym w Kościele.

**Słowa kluczowe:** przestępstwo, prawo karne, kara ekspiacyjna, utrata stanu duchownego, *dimissio de statu clericali*, Kodeks Prawa Kanonicznego, *Pascite gregem Dei*.

**Abstract:** In this article, the author presents and analyses delicts threatened by the penalty of dismissal from the clerical state according to the Code of Canon Law currently in force. In the introductory section, the author defends the validity of examining this topic, due to the reform of criminal law carried out by Pope Francis with the apostolic constitution *Pascite gregem Dei* of 23<sup>rd</sup> May 2021. This reform expands the catalogue of crimes which are punishable with the lifelong expiatory penalty *dimissio de statu clericali*. The author also provides an understanding of the concept of crime in canon law, and then, in the main part of the study, he presents and discusses individual crimes in the order corresponding to their arrangement in the revised Book VI of the Code of Canon Law devoted to penal sanctions in the Church.

**Keywords:** Delict, criminal law, expiatory penalty, dismissal from the clerical state, *dimissio de statu clericali*, Code of Canon Law, *Pascite gregem Dei*.