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The Crime of Sexual Exploitation of "Vulnerable Persons" Under the Current Provisions of Canon Law

PRZESTĘPSTWO WYKORZYSTANIA SEKSUALNEGO „OSÓB BEZBRONNYCH" W AKTUALNYCH PRZEPISACH PRAWA KANONICZNEGO

Streszczenie

W prawie kanonicznym prawodawca umieścił termin „osoby bezradne". Został on umieszczony dopiero w 2019 roku w systemie prawnym Kościoła katolickiego. Ustawodawca określił jego definicję legalną. Interesujący termin wskazuje na osoby, którym zapewniono ochronę przed przestępstwem wykorzystania seksualnego. Badania realizują podwójny cel. Celem pierwszorzędnym jest pokazanie w społeczności kościelnej osób, do których odnosi się termin „osoba bezradna". Drugorzędnym celem jest ukazanie na podstawie analizy przepisów prawa kanonicznego zakresu ochrony „osób bezradnych" wobec przestępstwa wykorzystania seksualnego. Do przeprowadzenia badań użyto odpowiednich metod badawczych. Należą do nich: metoda dogmatyczno-prawna, historyczna, filologiczna, porównawcza oraz metody analityczne wykorzystywane w naukach psychologicznych oraz kryminologicznych. Narracja stworzona w artykule pokazała, że do kategorii „osób bezbronnych" zalicza się różne osoby, m.in. dzieci, młodzież, osoby niepełnosprawne, osoby starsze, kobiety i mężczyzn uzależnionych od alkoholu lub środków psychoaktywnych, pensjonariuszy domów opieki i sanatoriów oraz ludzi, którzy nie potrafią oprzeć się agresji sprawcy. Obecne przepisy prawa kanonicznego kompleksowo chronią powyższe osoby przed przestępstwem wykorzystania seksualnego. W związku z tym ustawodawca wraz z organami jemu podległymi powinni stale obserwować zjawisko wykorzystania seksualnego i dostosowywać przepisy, aby zapewniały nadal wolność, bezpieczeństwo i ochronę osobom bezradnym oraz karały odpowiednimi sankcjami karnymi sprawców.

Słowa kluczowe: osoby bezradne, kanoniczne prawo karne, molestowanie seksualne, ochrona osób bezradnych w Kościele katolickim, prawo kanoniczne

Introduction

In the Polish criminal law, the legislator has included a provision that protects "vulnerable persons" within the public and social space. The said category of people does not need to be afraid of acts of crime aimed at restricting their freedom, prejudicing their honour, or infringing upon their psychosexual integrity.[1] There are other legal systems, apart from the Polish one, containing regulations protecting "vulnerable persons." The legal system of the Roman Catholic Church should be included among them. An analysis of the canon law regulations resulting directly from the Catholic Church community is an interesting area. The subject matter of the study were standards included in the canon criminal law, forming a consistent system for the protection of the faithful within the Church community.

It should be emphasised that the restriction of the understanding of "vulnerable persons" to just people with disabilities represents a significant simplification, as well as a mistake. Especially, as such persons are frequently encountered in parish communities or occupational therapy centres, are active in various forms of the Christian ministry, and, furthermore, participate in the sacramental and liturgical life of the Catholic Church. They are a group at risk of a serious crime: sexual abuse. Therefore, the research analysis will focus on different dimensions, including historical, legal, and criminal aspects.

The argument supporting a need for considerations in this area is the research gap. It should be emphasised that the Polish canon studies do not include a comprehensive monograph or scientific publications on that issue. The situation is similar in the international literature. Therefore, it appears to be necessary to conduct an analysis that would present the scope of protection available to "vulnerable persons" in its historical and legal dimension.

1 The Act of 6 June 1997 – Penal Code, Journal of Laws of 2020, item 1444, as amended (hereinafter: PC), Article 198: "Whoever, taking advantage of the vulnerability of another person, or of the lack of ability of that person to recognise the significance of the act or to control his/her conduct, resulting from mental disability or disorder, subjects such person to sexual intercourse or makes him/her submit to another sexual act or to perform such an act, shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years"; The National Police Headquarters, *Wykorzystanie seksualne osoby bezradnej lub niepoczytalnej art. 198. Postępowania wszczęte i przestępstwa stwierdzone z art. 198 k.k. za lata 1999–2020*, in: https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-6/63499,Wykorzystanie-seksualne-osoby-bezradnej-lub-niepoczytalnej-art-198.html [accessed: 27.09.2022]. Based on statistics published by the Police, it can be noted that in 1999–2010, the number of initiated proceedings ranged between 96 and 165, and it should be indicated that the number of cases discovered in those years was between 104 and 145. In 2010–2020, a change took place. The number of initiated proceedings increased to 166–265, while the number of crimes committed decreased to 95–137.

1. The term "vulnerable persons" in the provisions of Church law in the 20th and the 21st century

Only in 1917 did the Catholic Church introduce a codified system of law, which was called the Code of Canon Law. It was promulgated in 1917 by Pope Benedict XV (1914–1922). Previously, regulations governing the Church community were included in *Corpus Iuris Canonicum*, consisting of the *Decretum Gratiani*, papal decretals, constitutions published by individual popes, and documents and instructions of the congregation of the Roman Curia. The Code structure was based on five books, containing 2414 canons in total. The entire publication was drawn up in Latin.[2] The fifth book (*de delictis et poenis*) contains provisions of the canon criminal law.[3] Analysis of the fifth book showed that the legislator did not provide for the term "vulnerable person." That term is not included in any canon. However, analysis of certain specific crimes may indicate that for the legislator, "vulnerable persons" included a human foetus, a person attempting suicide, a woman abducted for the purpose of contracting marriage, and a person sexually abused by a clergyman. In that case, severe penalties were specified, to ensure protection and safety for the listed persons. In canon 2350, the legislator criminalises each case of abortion of a human foetus.[4] According to Franciszek Bączkowicz, abortion is an activity that may assume the form of a procedure that aims at direct removal from the mother's womb of a foetus that is immature, ill, preterm, having defects, or unable to live outside the mother's womb.[5] Other commentators of that canon noted that abortion of a foetus able to survive outside the mother's womb, i.e., after the sixth month of pregnancy, is not an abortion but an acceleration of the labour.[6] Stanisław Podoleński remarks that the expulsion of an immature foetus should be understood as miscarriage. It can occur due to illegal procedures, or for natural

2 W. Uruszczak, *Kodeks prawa kanonicznego z 1917 r. na tle innych kodeksów prawa w Europie od końca XVIII do początku XX wieku*, in: Z. Janczewski, J. Dohnalik, I. Kilanowski (eds.), *Kodeks Pio-Benedyktyński między tradycją a rozwojem*, Warszawa 2017, pp. 39–41.

3 *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV Auctoritate promulgatus*, AAS 9/II (1917), pp. 2–593 [hereinafter abbreviated as: CIC/1917].

4 CIC/1917, can. 2350 § 1: "Procurantes abortum, matre non excepta, incurrunt, effectu secuto, in excommunicationem latae sententiae Ordinario reservatam; et si sint clerici, praeterea deponantur."

5 F. Bączkowicz, *Prawo kanoniczne. Podręcznik dla duchowieństwa*, Vol. III, Opole 1958, p. 532.

6 CIC/1917, can. 1115 § 2; M. Conte de Coronata, *Institutiones iuris canonici. De delictis et poenis*, Vol. IV, Taurini 1955, p. 2015; G. Cocchi, *Commentarium in Codicem iuris canonici. De delictis et poenis*, Vol. V, Taurinorum Augustae 1929, p. 200; E. Ragatillo, *Institutiones iuris canonici*, Vol. II, Santander 1951, p. 1005.

causes, i.e., those independent of the human will.[7] The legislator foresaw a penalty for two types of abortion. The first involved taking various substances of plant, chemical, or animal origin that caused miscarriage. The second concerned medical procedures such as curettage, introduction of foreign bodies into the uterus, as well as actions such as hitting the stomach, carrying heavy weights, extreme sport training, or jumping from a height. Among the medical procedures, operations such as cranioclasis or disintegration of the foetus are distinguished, and must be treated as the crime of killing a child. The penalty prescribed for abortion was excommunication, which was reserved for the ordinary, while perpetrators being clergymen could be defrocked. In the case of people attempting suicide, the legislator recommended that they should not hold any functions in the church. A penalty of suspension was imposed on clergymen; however, it was not due to the severity of the act, but due to doubts as to whether they are still able to effectively fulfil their pastoral duties. Those attempting suicide incurred an irregularity for the reception of holy orders, and in the case of a clergyman, for their performance. Furthermore, no faithful were deprived of a catholic funeral.[8] Abduction of a woman was yet another example of caring for "vulnerable persons." Canon 2353 was to protect a woman against abduction for two purposes: to contract marriage or to commit an indecent act.[9] Mario Falco emphasised that a marriage contracted between an abductor and an abducted woman was invalid.[10] Wojciech Góralski noted that a constitutive element of abducting a woman is the use of physical or moral violence. This way, he referred to an opinion of Roman Rota auditor Pietro Mattioli. In the *coram Mattioli* ruling of 9 November 1961, it was emphasised that physical violence occurs when a resisting woman is transported, using material force, from a safe place to another, being in the power of the abductor or to a place, to which she went voluntarily and is retained by material force for the purpose of contracting marriage or committing an indecent act. Moral violence occurs when a woman is transported from one place to another, being in the power of a man, by the way of guile or deception, or when, by the way of guile or deception, she is retained at

7 S. Podoleński, *O życiu nienarodzonych*, Kraków 1933, pp. 8–19.

8 CIC/1917, can. 2350 § 2: "Qui in seipsos manus intulerint, si quidem mors secuta sit, sepultura ecclesiastica priventur ad normam can. 1240, §1, n. 3; secus, arceantur ab actibus legitimis ecclesiasticis et, si sint clerici, suspendantur ad tempus ab Ordinario definiendum, et a beneficiis aut officiis curam animarum interni vel externi fori adnexam habentibus removeantur."

9 CIC/1917, can. 2353: "Qui intuitu matrimonii vel explendae libidinis causa rapuerit mulierem nolentem vi aut dolo, vel mulierem minoris aetatis consentientem quidem, sed insciis vel contradicentibus parentibus aut tutoribus, ipso iure exclusus habeatur ab actibus legitimis ecclesiasticis et insuper aliis poenis pro gravitate culpae plectatur."

10 M. Falco, *Introduzione allo studio del Codex Iuris canonici*, Bologna 1992, p. 331.

a place to which she went voluntarily, even when the retained woman is deprived of the option of material, i.e., physical, departure.[11] Only a man could be a perpetrator of that crime, because when a woman abducted a man, this was neither an impediment to marriage nor a crime.[12] The above ruling encouraged rota auditors to further actions within jurisprudence. On this basis, components forming the content of the impediment of abduction were established, which were to protect the woman against the marriage. Rulings of the Roman Rota indicated three elements constituting that impediment: it must be committed by a man in person or through his agent, the abduction must be for the sole purpose of contracting marriage, and the abduction needs to occur by force, be unfair, and without the woman's consent from a safe to an unsafe place.[13] When a marriage was contracted with an impediment of abduction, it was *ex lege* invalid, while its perpetrator was excluded from all church acts by the force of law; and furthermore, depending on the severity of his guilt, other penalties could also be imposed on him.[14] When the *de sexto* crime was committed by a clergyman against a minor, the legislator provided for very severe penalties. Canons 2358 and 2359 § 2 specify the objective and subjective scope of the forbidden act.[15] The clergyman who committed a homosexual or a zoophilic act, as well as who sexually abused a person under 16 years of age, had to be judged by the Congregation of the Holy Office. In 1922, the said Congregation issued a special instruction, *Crimen sollicitationis*. In the opinion of José María Yanguas, the instruction regulated behaviours termed *crimen passimum*. In that category he included, among others, homosexuality, *bestialitas*, sexual abuse of a minor by a clergyman, common law marriages of clergymen, and giving the remission of sin by a confessor to an accomplice in sin against the sixth commandment.[16]

11 Coram Mattioli decree of 09/11/1961, „Sacra Rota Romana Decisiones" 1961, No. 53, p. 505; W. Góralski, *Przeszkoda uprowadzenia*, in: W. Góralski (ed.), *Przeszkody małżeńskie w prawie kanonicznym*, Warszawa 2016, pp. 329–330.

12 F. Bączkowicz, *Prawo kanoniczne…*, pp. 538–539; E. Regatillo, *Derecho matrimonial eclesiastico*, Santander 1962, pp. 166–167.

13 W. Góralski, *Przeszkoda uprowadzenia*..., p. 331.

14 F. Bączkowicz, *Prawo kanoniczne…*, p. 539.

15 CIC/1917, can. 2358: "Clerici in minoribus ordinibus constituti, rei alicuius delicti contra sextum decalogi praeceptum, pro gravitate culpae puniantur etiam dimissione e statu clericali, si delicti adiuncta id suadeant, praeter poenas de quibus in can. 2357, si his locus sit"; can. 2359 § 2: "Si delictum admiserint contra sextum decalogi praeceptum cum minoribus infra aetatem sexdecim annorum, vel adulterium, stuprum, bestialitatem, sodomiam, lenocinium, incestum cum consanguineis aut affinibus in primo gradu exercuerint, suspendantur, infames declarentur, quolibet officio, beneficio, dignitate, munere, si quod habeant, priventur, et in casibus gravioribus deponantur."

16 J.M. Yanguas, *De crimine pessimo et de competenta S. Officii relate ad illud*, "Revista Española de Derecho Canónico" (1946) 2, p. 436: "Argument seems to be that it was only by taking swift,

John Beal, in turn, noticed that with this instruction, bishops were equipped with an effective tool to fight crimes – including those involving incitement to sin, homosexuality of clergy, sexual abuse of children and *bestialitas* – as well as a tool to provide more effective protection to those needing it in the universal and local Church.[17] The said instruction did not include the term "vulnerable person." It could be concluded that there was an informal catalogue of vulnerable persons who needed appropriate protection. That catalogue included a minor, a child, a woman, a foetus, people attempting suicide for mental reasons, and people sexuallyabused by clergymen.

The aforementioned solutions survived the times of World War II and the Second Vatican Council (1962–1965). After the end of the Second Vatican Council sessions, the period of reforming the canon law began. Different visions of the Church law collided during this review of the regulations. In the context of the canon criminal law, the intent was to decentralise its character and increase the power and understanding of local bishops. John Beal's opinion is consistent with the view of Dariusz Borek, who indicated that the canon criminal law was to be replaced with the "pastoral model." It was to be a tool to explain the behaviours covered by the term *crimen pessimum*. The "pastoral model" was to replace the previous procedure included in the modified instruction. In the said model, the central place was taken by therapeutic and psychological problem solving. In that approach, a bishop was to be a doctor rather than a judge. He was to do everything possible to cure a perpetrator rather than to punish them. At that time, legal standards were replaced with supervision and therapeutic models. This led to many negative attitudes. Offences described as *crimen pessimum* became blurred in the Church space. This is confirmed by Dariusz Borek, who noticed that in 1962–1989, *crimen pessimum* behaviours were associated with administering the Sacrament of Penance and Reconciliation, and with the term of laicisation, which appears in most cases of granting clergymen a dispensation from celibacy.[18]

The two models, "pastoral" and "therapeutic," ended with the promulgation of the new Code of Canon Law. On 25 January 1983, Pope John Paul II

decisive, and secret action to discipline offending clerics before their crimes reached the attention of the civil courts that the Church could be spared the humiliation of having priests in the public dock as sex offenders."

17 J. Beal, *The 1962 Instruction Crimen ollicitationis Caught Red-Handed or Handed a Red Herring*, "Studia Canonica" (2007) 41, pp. 200–202.

18 D. Borek, *Sextum Decalogi praeceptum w kanonicznym prawie karnym aktualnie obowiązującym*, Tarnów 2015, pp. 13–14.

announced new regulations of the canon law.[19] Although this new collection of laws regulated many issues of importance for the Church community, it should be emphasised that those legal provisions still did not include neither the term, nor a legal definition of, "vulnerable person." Leszek Adamowicz analysed the Code of Canon Law of 1983 in terms of the terminology applied. He noticed that the legislator used eight different terms in relation to minors. The term *infans* requires special attention here. It means minors under 7 years old. The quoted term was used eleven times. The legislator uses it for two categories of persons. The first category covers unborn children in the context of legislation concerning baptism (*fetus abortivi*), criminal law (*abortum*), granting holy orders, and expulsion from a religious institute. In the second category, the term *infans* was used to present the canon and legal law status of both minor and adult people with a handicap, who were seven years old or older.[20]

In relation to the disclosure of scandals concerning the sexual abuse of minors by clergymen in the United States and Ireland, the Holy See issued special indults that equipped Bishops' Conferences with necessary tools.[21] Within the Episcopal Conference of the United States of America, the bishops prepared a document containing standards for the protection of minors against sexual abuse. As one of the measures of fighting abuse, the age of victims of the abuse was increased from 16 to 18 years. The authors of the document emphasised that the criminal claim expired after ten years. The period of limitation started from the moment when the victim of a crime turned 18 years old. Offences of that type were referred for judgement to the Tribunal of the Roman Rota. In Bertram Griffin's opinion, the standards were imprecise. As an example, he indicated a lack of retroactivity of the provisions. They applied only to cases that were to occur after the new legislation was approved.[22] John Alesandro suggested that this lack of retroactivity resulted from the principles of *common law*

19 Codex Iuris Canonici auctoritate Ioannis Pauli PP. II _ssimilator, AAS 75/II (1983), pp. I–XXX, 1–324. Polish text: *Kodeks Prawa Kanonicznego. Przekład polski zatwierdzony przez Konferencję Episkopatu*, Poznań 1984. [hereinafter abbreviated as: KPK/1983].

20 KPK/1983, can. 852 § 2; can. 99; can. 105; can. 857 § 2; can. 883; L. Adamowicz, *Status kanoniczno-prawny osoby małoletniej – zagadnienia terminologiczne*, "Teka Komisji Prawniczej PAN Oddział w Lublinie" (2020) 1, p. 6: The author indicates the following Latin terms found in the quoted canons: infanti _ssimilator; infantibus _ssimilator, infantia egressus, infantia egressi, and infantia egressum.

21 Secretary of State, *Rescript from Audience of His Holiness 25.04.1994*, "Ius Ecclesiae" (1996) 8, p. 193.

22 B. Griffin, *The Reassignment of a Cleric Who Has been Professionally Evaluated and Treated for Sexual Misconduct with Minors: Canonical Considerations*, "The Jurist" (1991) 51, pp. 328–332.

and the American understanding of a statute of limitations.[23] It should be noted that the discussed changes in the legislation concerned only one type of offence, that is, sexual abuse of minors. No legal regulations providing protection for "vulnerable persons" are included in the document. The legislator equated minors with "vulnerable persons." The scale of the problem of sexual abuse in the entire Catholic Church forced the Holy See to undertake specific actions. On 30 April 2001, Pope John Paul II published the letter *motu proprio Sacramentorum sanctitatis tutela*, in which he listed the most severe offences – *delicta graviora*. The *delicta graviora* catalogue contained the offence morals, that is, sexual abuse of a minor by a clergyman. On this basis, minors under 18 years of age were provided protection, instead of 16 years of age, as canon 1395 § 2 previously specified. Minors as such were provided protection. Nevertheless, the document required numerous supplements. Behaviours of direct abuse were criminalised. In the case of indirect abuse, penalties were specified for certain behaviours: exposure to a minor, other sexual acts in which no direct contact with a minor occurred, as well as exposing minors to pornographic materials. As was the case in earlier documents, the term "vulnerable person" was not used.[24]

In 2010, Pope Benedict XVI (2005–2013) amended the regulations governing the issue of the most severe offences – *delicta graviora*. The amendment increased the competencies of the Dicastery for the Doctrine of the Faith, and this confirms the great concern of the Church for the most vulnerable persons. The issue of interest to us, i.e., the protection of vulnerable persons, was expressed in various parts of the document. Analysing the changes made by Pope Benedict XVI, Dariusz Borek noted that the concern of the Church regarding the protection of minors and people of an equivalent status (vulnerable persons) is visible. It aimed to ensure their protection against sexual abuse or lewd behaviours that directly lead to the violation of physical, mental, and legal integrity in the sexual sphere.[25] Changes implemented by the document were also visible in provisions of the formal law. The period of limitation for *actio criminalis* was extended to 20 years, where the Dicastery for the Doctrine of the Faith had a right to waive that limit. The penal sanctions were

23 J. Alesandro, *Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State*, "Ius Ecclesiae" (1996) 8, pp. 186–187.

24 G. Núñez, *La competencia penal de la Congregación para la Doctrina de la Fe. Comentario al motu proprio Sacramentorum Sanctitatis Tutela*, "Ius Canonicum" (2003) 53, pp. 380–381; V. de Paolis, *Normae de gravioribus delictis riservati alla Congregazione per la Dottrina della Fede*, "Periodica" (2002) 91, pp. 308–309.

25 D. Borek, *Delicta graviora contra mores w normach De delictis reservatis z 2010 roku*, "Prawo Kanoniczne" (2014) 2, p. 54.

extended and listed various penalties for offences of this type.[26] For the first time, the Latin text of the papal document included the phrase "imperfecto rationis usu habitu pollet" referring to vulnerable persons. Therefore, two crucial issues should be emphasised. First, it is not required for the person who is a victim of sexual harassment to be totally devoid of the use of reason. It is enough for the victim to have normal processes of intellect and will that are partly affected. The quoted Latin phrase "imperfecto rationis usu habitu pollet" clearly emphasises that it does not concern a total lack of the use of reason. The second question concerns a state of incomplete use of reason. It cannot be transient, and should be permanent. The permanent character of that state is not interrupted by so-called *lucida intervalla*. In Dariusz Borek's opinion, the causes of the permanent character of that state lie in mental diseases, chronic alcohol abuse, taking drugs, senile dementia, or a brain stroke, which may result in a permanent condition that directly leads to the incomplete use of reason.[27] Borek's point of view was confirmed by Claudio Papale, who noted that vulnerable persons, *vurnerabili*, i.e., people at a particular risk of being wounded or being dependant on others, are subject to protection. In the opinion of the Italian author, it should be verified whether the said permanent character deciding about the incomplete use of reason occurred in that group of victims of harassment at the moment the offence was committed. If it did not occur, the general provisions of the canon criminal, substantive, and procedural law should be applied, taking into account canon 1326 § 1 n. 2.[28] Concluding this part, we need to refer to the opinion of José Pascual Bernal, who reminds that sexual harassment is a severe violation of law, and that it assumes a particularly harmful form when it violates the intimacy of a person who has no freedom to express their legal and full consent. For this reason, minors or those who behave like minors and are defenceless in terms of their mental status suffer the greatest damage to their mental health.[29] Returning to the main focus of the analysis, it should be emphasised that the amended document of Pope Benedict XVI also did not include the term "vulnerable persons."

Visible change to the canon legislation was introduced by Pope Francis (2013 – present). On 9 May 2019, he published the apostolic letter *motu proprio Vos estis lux mundi*. The letter consisted of two parts, theological and legal. The legal part

26 Ibidem, p. 55.

27 D. Borek, *Sextum Decalogi praeceptum*..., p. 114.

28 C. Papale, *I delitti contro la morale*, in: A. D'Auria, C. Papale (eds.), *I delitti riservati alla Congregazione per la Dottrina della Fede*, Città del Vaticano 2014, pp. 31–32.

29 J.P. Bernal, *Cuestiones canónicas sobre los delitios más graves contra el sexto mandamiento del Decàlogo*, "Ius Canonicum" (2014) 54, pp. 173–174.

included the term "vulnerable person" and its legal definition. A vulnerable person (*persona vulnerabile*) is understood as any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even if occasionally, limits their ability to understand or to want or to otherwise resist the offence.[30] The form of this legal definition was influenced by the previously mentioned document of Pope Benedict XVI and the apostolic letter *motu proprio Come una madre amorevole* of Pope Francis.[31] According to Dariusz Mazurkiewicz, in the aforementioned letter *Come una madre amorevole*, the legislator used the term "the most vulnerable adults" or, according to another translation of this term into Polish, "vulnerable adults" (*adulti vulnerabili*). The legislator aimed to provide comprehensive protection. Mazurkiewicz emphasises that the protection covers infirm persons who, having physical disabilities, are not able to defend themselves against the abuser, as well as people who are imprisoned, stay in institutions, or are addicted, and also those who only temporarily and occasionally, and even through their own fault, are under the influence of psychoactive substances. In his opinion, the legal definition expands the catalogue of vulnerable persons.[32] According to Piotr Wojnicz, this legal definition of a "vulnerable person" was supposed to oblige clergymen to notify Church and state authorities about cases of sexual harassment.[33] The revised term of "vulnerable person" was included in successive documents published by the Dicastery for the Doctrine of the Faith, including Vademecum on certain points of procedure in the treating of cases of sexual abuse of minors committed by clerics (version 1.0), (version 2.0).[34] Furthermore, all Bishops' Conferences

30 Francis, *Apostolic letter motu proprio "Vos estis lux mundi"*, 09/05/2019, in: P. Studnicki, M. Dalgiewicz (eds.), *Odpowiedź Kościoła na dramat wykorzystania seksualnego małoletnich. Aspekt prawny. Dokumenty i komentarze*, Ząbki 2020, p. 48.

31 Francis, *Apostolic letter motu proprio "Come una madre amorevole"*, 04/06/2016, in: P. Studnicki, M. Dalgiewicz (eds.), *Odpowiedź Kościoła na dramat wykorzystania seksualnego małoletnich...*, p. 43.

32 D. Mazurkiewicz, *Normae substantiales w liście apostolskim papieża Franciszka „Vos estis lux mundi" w świetle wcześniejszego prawodawstwa powszechnego i polskiego prawa partykularnego*, „Studia Koszalińsko-Kołobrzeskie" (2021) 28, p. 469.

33 P. Wojnicz, *Penalizacja czynów seksualnych wobec małoletnich – rozważania na tle prawa kanonicznego i polskiego prawa karnego*, „Civitas et Lex" (2020) 2, pp. 59–60.

34 Dicastery for the Doctrine of the Faith, *Vademecum dotyczące wybranych kwestii proceduralnych w zakresie postępowania w przypadku nadużyć seksualnych przez duchownych wobec małoletnich* (version 1.0), in: P. Studnicki, M. Dalgiewicz (eds.), *Odpowiedź Kościoła na dramat wykorzystania seksualnego małoletnich…*, pp. 59–103; Dicastery for the Doctrine of the Faith, *Vademecum dotyczące wybranych kwestii proceduralnych w zakresie postępowania w przypadku nadużyć seksualnych przez duchownych wobec małoletnich* (version 2.0) in: https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.0_pl.html [accessed: 20.10.2022].

(including the Polish Episcopal Conference) had to consider the legal definition of a "vulnerable person" in their guidelines.[35] On 8 December 2021, the legislator amended the canon criminal law. In the new structure of the canon criminal law, the offence of sexual abuse against a minor and a "vulnerable person" was included in canon 1398 § 1, 1° "Qui delictum commit contra sextum Decalogi praeceptum cum minore vel cum persona quae habitualiter usum imperfectum rationis habet vel cui ius parem tutelam agnoscit."[36] The structure of this canon refers to the term "imperfecto rationis usu habitu pollet"; nevertheless, this legal provision does not restrict the protection to only one category of persons in the canon criminal law, but provides comprehensive protection for different people with a permanent, incomplete ability to use reason. Reviewing the history of the canon law provisions, changes that took place in the 20th and 21st centuries can be noticed. The legislator attempted to provide protection to different categories of people. Along with the disclosure of paedophile scandals in the Catholic Church, it provided protection for minors, because the majority of reports concerned cases of this type. When the harassment affected other groups of persons, the legislator's reaction could be noticed in the changes to the legislation. The legal definition of a "vulnerable person" was formed relatively late. Earlier introduction of that term into the legal system would have enabled investigation of many cases related to emerging reports on sexual abuse of people who were disabled, elderly, mentally ill, or under the influence of psychoactive substances. The further part of this study presents an analysis of two crucial dimensions associated with the subjects and an action that results in the offence of sexual abuse.

2. *Delictum propria* – a crime committed by a specific group of persons

The crime of sexual abuse indicates two types of subjects, an active subject, that is, the perpetrator, and a passive subject, or the victim of that crime. Therefore, these two categories and the persons included in them should be presented in detail. In beginning a discussion of this topic, the term *delicta propria* should be explained.

35 Polish Episcopal Conference, *Wytyczne dotyczące wstępnego dochodzenia kanonicznego w przypadku oskarżeń duchownych o czyny przeciwko szóstemu przykazaniu Dekalogu z osobą niepełnoletnią poniżej osiemnastego roku życia*, in: P. Studnicki, M. Dalgiewicz (eds.), *Odpowiedź Kościoła na dramat wykorzystania seksualnego małoletnich…*, p. 105.

36 *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus*, AAS 75/II (1983), pp. I–XXX, pp. 1–324. Polish text: *Kodeks Prawa Kanonicznego. Przekład polski zatwierdzony przez Konferencję Episkopatu*, Warszawa 2021 [hereinafter abbreviated as: KPK]. KPK, can. 1398 § 1, 1°: "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."

It is translated as an individual crime committed by one category of persons, in this case, clergymen. In the system of the canon law, this Latin term has become associated with *delictum contra mores*, because the legislator criminalised sexual acts of clergymen against minors and people of an equivalent status. The current regulations included in the canon criminal law extended the range of active subjects to also include people of consecrated life and the lay faithful.

2.1. Active subject – perpetrator of the crime

In the canon law, the legislator defined the term "clergymen." This was influenced by changes introduced by Pope Paul VI, who reformed the catalogue of clergymen.[37] The analysis of two canons, 1009 § 1 and 266, will show who should be understood as "clergymen." Canon 1009 § 1 defined the orders as the episcopate, the presbyterate, and the diaconate.[38] This norm directly refers to the document of Pope Paul VI. Canon 266 § 1 reminds that through the reception of the diaconate, a person becomes a cleric and is incardinated in the particular church or personal prelature for whose service he has been advanced.[39] In the regulations of 30 April 2001, only clergymen could be an active subject. Dariusz Borek noted that this term did not include persons of a consecrated life who did not receive holy orders, or the lay faithful.[40] During that period, when the perpetrator of the crime was a person of a consecrated life who did not receive holy orders, or a lay faithful person, the regulations of 30 April 2001 did not apply. This was implied by canon 18, which reminded that the provisions of the criminal law should be subject to strict interpretation.[41] This does not mean that persons of this type could not be held criminally responsible. In the case of consecrated people, this responsibility is specified in canons 695, 729, and 746.[42] The said provisions were amended in 2010.

37 Paulus VI, *Littere apostolicae motu proprio "Ministeria quaedam"*, 15.08.1972, AAS 64 (1972), pp. 529–534. Polish text: Paul VI Apostolic letter motu proprio *Ministeria quaedam* introducing a new discipline on first tonsure, minor orders, and the subdiaconate, in the Latin Church, 15.08.1972, in: *Posoborowe prawodawstwo kościelne, dokumenty prawno-liturgiczne*, collected and translated by E. Sztafrowski, vol. V, issue 2, Warszawa 1974, pp. 7–19.

38 KPK, can. 1009 § 1.

39 KPK, can. 266 § 1.

40 KPK, can. 207; D. Borek, *Sextum Decalogi praeceptum*..., p. 95.

41 KPK, can. 18.

42 KPK, can. 695: "§ 1. A member must be dismissed for the delicts mentioned in cann. 1397, 1398, and 1395, unless in the case of delicts mentioned in cann. 1395, § 2-3 and 1398, § 1, the superior decides that dismissal is not completely necessary, and that correction of the member, restitution of justice, and reparation of scandal can be resolved sufficiently in another way. § 2. In these cases, after the proofs regarding the facts and imputability have been collected, the major superior

The disposition included in the documents of Pope Benedict XVI reminds that only clergymen who received orders as the episcopate, the presbyterate, or the diaconate can be a perpetrator. The legislator did not extend the meaning of this term to other persons. Successive amendments to the legislation in this area imply only clergymen. In the new structure of the canon criminal law, in canon 1398 § 2, the legislator expanded the catalogue of active subjects to include consecrated persons who did not receive holy orders and the lay faithful.[43]

Taking the above explanations into account, they should be expanded with information from the fields of psychology, psychiatry, and criminology. Using knowledge of this type, it is possible to distinguish categories of perpetrators who sexually abuse other persons according to their sexual preferences. Referring to the discussed doctrines, two categories of perpetrators of sexual offences can be established. The first category includes preferential perpetrators. Such persons have sexual preferences disorders. They feel satisfaction and arousal only in contact with a child. In the opinion of Estera Twardowska-Szostak, persons of this type select only children for their sexual activities.[44] Three subtypes can be distinguished in this category. The first one includes seductive perpetrators. Persons of this type are characterised by their easy ability to establish contact with children. They undertake actions to eventually build trust, sympathy, and relationships with a child. The victims of such persons are children that are lonely due to family circumstances or a lack of relations with their peers. The perpetrator seduces a child by showing them interest and care and, above all else, by offering their friendship. After some time, sexual abuse occurs. Usually, due to good relations with the victim, the perpetrator is not disclosed. The second subtype in this group are introverts. The perpetrators from this group are not able to establish contact with a child. They can be described as reserved people with deficient communication skills. Perpetrators of this type

is to make known the accusation and proofs to the member to be dismissed, giving the member the opportunity for self-defence. All the acts, signed by the major superior and a notary, together with the responses of the member, put in writing and signed by that member, are to be transmitted to the supreme moderator"; can. 729 "A member is dismissed from an institute according to the norm of cann. 694 and 695; moreover, the constitutions are to determine other causes for dismissal, provided that they are proportionately grave, external, imputable, and juridically proven, and the method of proceeding established in cann. 697–700 is to be observed. The prescript of can. 701 applies to one dismissed"; can. 746: "For the dismissal of a definitively incorporated member, cann. 694–704 are to be observed with appropriate adaptations."

43 KPK, can. 1398 § 2.

44 E. Twardowska-Staszek, *Sprawcy wykorzystania seksualnego dzieci z niepełnosprawnością intelektualną*, in: *Niedostępne. Niedogodne. Niedyskretne. Jak chronić dzieci i dorosłych z niepełnosprawnością intelektualną przed przemocą seksualną*, prep. M. Babik, E. Twardowska-Staszek, K. Besiekierska, Kraków 2022, pp. 28–29.

select very small children or mentally disabled people as their victims. Those people are selected because the perpetrator can easily scare them or force them to remain silent. Sadistic perpetrators form the last subtype. It should be emphasised that these people are very brutal, as these perpetrators experience sexual satisfaction when they completely control their victims. Usually, they choose mentally disabled people. They employ physical violence against them, because inflicting pain and suffering leads to humiliation of the victim, which translates into arousal experienced by the perpetrator of the sexual abuse.

The second group of perpetrators are substitute perpetrators, who under normal circumstances prefer sexual activities with adults. Unfortunately, for various reasons, mainly due to their personality and interpersonal problems, they choose children because they are discreet and available. As many as five subtypes can be distinguished in this category. The first of them are unadjusted perpetrators. They have changes in their nervous system, accompanied by psychosis, personality disorders, and senile dementia. They experience problems with normal emotional and social functioning. The sexual needs of such people are unsatisfied. They select children for this purpose, because in their opinion they are available and non-threatening. The sexual contact with children is not satisfying and is characterised by increased levels of frustration. Occasionally, physical and sexual violence occurs. The second subtype are sexually inhibited perpetrators. They have low self-esteem, and poor communication and social competences. They abuse children because they are not able to develop a sexual relation with adults. For them, children are substitutes for adult sexual partners. The third type are regressive/frustrated perpetrators. They usually do well in life. They do not have problems with establishing social contacts. These perpetrators live in a family, have a husband/wife or a partner. This type also includes clergymen. In some cases, events and circumstances in their life contributed to committing sexual abuse of children. Those causes include dependence on alcohol or psychoactive substances, or a conflict with a close person or a superior. Most often, the criminal acts are caused by frustrations with an unfulfilled sexual sphere. The perpetrators usually select pubescent children, treating them already as adult partners. The fourth type concerns morally undiscerning perpetrators. They usually abuse their own children, or children of their acquaintances. They use a set scheme of establishing contacts with other people. Usually, it involves abuse. Whenever they have a chance, they do not hesitate to do this. The last type concerns sexually undiscerning perpetrators. They usually seek sexual experiences. When abusing a child, they usually treat this situation as another, new sexual experience. According to Giovanni Cucci and Hans Zollner, perpetrators of sexual abuse of children are usually men. Women who are not able

to establish a relationship with adult men also occur, so they abuse pubescent children.[45] In the case of sexual abuse of younger children, women explain that fact with the fulfilment of their maternal feelings and responsibilities.[46] The opinion of Charles Scicluna, who was the Promoter of Justice at the Dicastery for the Doctrine of the Faith between 2001 and 2010, should be recalled here. During that period, 3000 cases of sexual abuse by clergymen in last 50 years of the 20th century were reported. According to Scicluna, 60% of the reports concerned acts of homosexual ephebophilia, i.e., resulting from sexual interest in adolescents; a further 30% were heterosexual relations; and 10% were paedophilic acts resulting from sexual interest in children that were still sexually immature.[47] The church law took this classification from the Czech researcher Kurt Freund, who, together with a group of researchers, Hal Scher, Sam Chan, and Mark Ben-Aron from the Institute of Psychiatry and the Faculty of Psychiatry in Toronto, created the terms "ephebophilia" and "hebephilia" to express a specific sexual interest in adolescent boys and girls, respectively.[48] Rachel Langevin from the Faculty of Psychology at the University of Montreal conducted studies involving 36 priests abusing children, of whom 69% were Catholic priests. The study showed that the victims were mainly boys (83%). Girls represented 14%, and children of both sexes only 3% of the cases. The victims of sexual abuse were under 14 years, i.e., 48% of the cases of sexual abuse in the given study group.[49] Summing up this part of the tudies, six characteristics common to the active subject in the offence of sexual abuse should be listed. They included

45 G. Cucci, H. Zollner, *Kościół a pedofilia*, trans. G. Rawski, Kraków 2011, pp. 21–22: "According to the Censis data, in Italy the majority of sexual abuse cases (84–90%) are committed in a family. Thus, it can be concluded that this act is of incestuous character. Another element of these studies showed that among the victims of the said cases of abuse, 30% were minors; 30% were cases of ephebophilia, and the remaining 40% concerned adult victims"; A. Oliverio Ferraris, B. Graziosi, *Pedofilia. Per saperne di piú*, Roma–Bari, 2004, pp. 39–42. The data was used during the congress Pedofilia e Internet: vechie ossesioni e nuove crociate organised by the Radical Party on 27 October 1998.

46 E. Twardowska-Staszek, *Sprawcy wykorzystania seksualnego...*, p. 33.

47 G. Cardinale, *Chiesa rigorosa sulla pedofilia intervista a mons. Charles Scicluna*, "Avvenire" (2010) 5, p. 3. The majority of reported cases comes from the United States from 2003–2004. They represented 80% of all reports. In 2009, the share of reports from the United States stabilised at a level of 25%, i.e., 223 reports, of all reports from the entire world. In 2007–2009, the average number of cases reported to the Dicastery was 250 a year. Many countries report just one or two cases. It should be remembered that during that period, the total number of diocesan and religious order priests was 400,000.

48 K. Freund, H. Scher, S. Chan, M. Ben-Aron, *Experimental analysis of pedophilia*, "Behaviour Research and Therapy" (1982) 20, pp. 105–112.

49 R. Langevin, *Who Engages in Sexual Behaviour with Children? Are Clergy Who Commit Sexual ffences Different from Other Sex Offenders?*, in: K. Hanson, F. Pfäfflin, M. Lütz (eds.), *Sexual Abuse in the Catholic Church. Scientific and Legal Perspectives*, Città del Vaticana 2004, pp. 24–50.

an uncertainty of one's sexual orientation, behaviours and interests of an infantile type, poor relations with peers, unilateral development in the area of sexuality, experiencing violence and bad sexual experiences, and a passive, introverted, dependant, and conformist personality.[50]

2.2. Passive subjects – victims of sexual abuse

In the current regulations of the canon law, a minor, a child, an adolescent, and "vulnerable persons" are all described as passive subjects. This results from the fact that the act of sexual abuse affects them either directly or indirectly. Due to the perpetrator's lewd behaviour, the victim's mentality, psychosexual integration, and bonds with other people are destroyed, and such people lose their self-esteem. They become victims of the acts of sexual abuse of perpetrators. The protection offered to these people has varied throughout the years. Analysis of the document *Crimen sollicitationis* from 1922 showed that persons affected by *crimen pessimum* offences were protected by the Church legislator. The said document contained a special procedure. It was based on the method of "indirect achievement of moral certainty." The aim of that procedure was to make a final decision concerning the guilt or innocence of a person accused of *delicta graviora* offences. This method provided for several stages. The first of them examined the reliability of the person accusing the clergyman, then the way and style of life of the suspect were analysed, and, finally, their behaviour was evaluated. The accusation of alleged *delicta graviora* offences was considered to be one of the most severe ones possible in the Catholic Church. This procedure was to guarantee the suspect protection against false accusations. The people performing the individual stages of the procedure had to maintain strict confidentiality. The attitude of strict confidentiality was aimed at protecting not only the suspect, but also all persons involved against inappropriate notoriety. It was to be maintained until the ruling of the Church tribunal.[51] The times of *Vaticanum II* and the period until the publication of the new Code of Canon Law in 1983, unfortunately, did not ensure the required protection for victims, due to the "pastoral" and psychological models applied. These models were discussed in the first part of this paper. The new Code of Canon Law of 1983 ensured protection for minors, such as children and adolescents. This is confirmed by canon 1395 § 2, which was worded as follows: "Clericus qui altier contra sextum Decalogi preaceptum

50 G. Cucci, H. Zollner, *Kościół a pedofilia*..., pp. 30–36.

51 D. Borek, *Sextum Decalogi praeceptum*…, p. 13; K.M. Kiełpiński, *List apostolski motu proprio papieża Franciszka „Vos estis lux mundi" nowelizacją kanonicznego prawa karnego i skuteczną ochroną małoletnich*, „Studia Iuridica Thoruniensia" (2019) 25, pp. 121–122.

delinquerit, si quidem delictum vi vel minis vel publice vel cum minre infra aetatem sedicem annorum patratum sint, iustis poenis puniatur, non exclusa, si causus ferat, dimisione e statu clericali."[52] The quoted canon results indirectly from canon 2359 § 1 of the Code of Canon Law from 1917. The crucial term included in canon 1395 § 2 is *delinquere*, which indicates a crime, and not just any offence or moral violation of the Commandments of the Decalogue. It concerns sexual behaviours in breach of the Sixth Commandment of the Decalogue, mentioned in that canon. The legislator does not provide grounds for establishing the limit of protection under 16 years of age. In Dariusz Borek's opinion, an answer to such doubts should be sought in national criminal codes. For example, in the Polish Criminal Code, a sexual act with a minor under 15 years of age is a crime.[53] The extent of the problem of sexual abuse forced the legislator to raise the age of protection for minors. In the already mentioned document of 30 April 2001, that age was risen to 18 years. The legislation protects children and adolescents who are under 18 years old. It should be emphasised that the scope of this protection is of an absolute character. The attitude of the minor is of no consequence. In such case, it is irrelevant whether the victim agreed to a given act of a sexual nature freely and spontaneously, or provoked it, or whether it occurred without their consent. The sex of the victim is also unimportant. Summing up this part of discussion, we must refer to the studies conducted by David Albornoz. He noted that with the increase of the age to 18 years, the scope of minors' protection became more comprehensive. Furthermore, he added that for the crime to occur, it is irrelevant whether it was a one-time or a permanent act, or whether physical contact occurred between the perpetrator and the victim. He emphasised that the minor is protected already at the moment when the activity undertaken by the perpetrator results from their intent to sexually abuse the minor to achieve sexualsatisfaction or arousal.[54]

The discussed document from 2001 was amended in 2010 and 2021. Apart from minors, the legislation provided protection to other members of the Church community. The regulations provided special protection to those persons with

52 KPK/1983, can. 1395 § 2: "A cleric who has offended in other ways against the sixth commandment of the Decalogue, if the offence was combined with the use of force or threats, or committed in public, or with a minor under sixteen years of age, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants."

53 D. Borek, *Sextum Decalogi praeceptum…*, p. 77.

54 D. Albornoz, *Normae e orientamenti della Chiesa Cattolica dinanzi agli abussi sessuali di minori perpetrati de chierchi*, „Salesianum" (2008) 70, pp. 711–726; A. Domaszk, *Reakcja Kościoła na nadużycia seksualne wobec nieletnich ze strony duchownych*, "Seminare" (2012) 31, pp. 69–86.

permanent and incomplete use of reason. This was implied by the Latin term "imperfecto rationis usu habitu pollet." They included those who are disabled, had a stroke, are paralysed, have physical disabilities, are elderly, are residents of nursing homes, or are dependent on psychoactive substances and/or alcohol. In Claudio Papale's opinion, people affected by *lucida intervalla*, i.e., the temporary and incomplete use of reason, cannot be the passive subject. He put forward a very controversial thesis stating that a situation in which the passive subject of the sexual act is a person who, at the moment of harassment, did not have full use of reason for causes of a temporary character, cannot be treated as a crime.[55] He based his opinion on the point of view that intentionally putting oneself into a state of being under the influence of alcohol or of narcotic intoxication excludes the possibility of being a passive subject. Such an opinion is isolated in the literature of this subject. Taking the above approach into account, one must consider such a case in which a person (who is a teenager, had a stroke, or suffers from initial dementia) intentionally puts themself into a state of being under the influence of alcohol or of narcotic intoxication, and then commits a sexual act with a clergyman. The question arises as to how this act should be qualified. Based on Papale's arguments, the said act cannot be defined as a form of sexual harassment or abuse. However, holistically considering the opinions of experts on the canon law, Papale's opinion should be rejected, because it is isolated. Therefore, the legislator introduced the term "vulnerable person" into the legal system and provided its legal definition. This way, protection was also provided to people who cannot resist aggression. This term is of an extending character, because it can include a child, an adolescent, and a minor intoxicated with alcohol or a psychoactive substance, as well as an adult woman or man undergoing a nervous breakdown, depression, or a psychosomatic crisis, elderly people, people post stroke or apoplexy, disabled people, residents of nursing homes, and people seduced by the perpetrator.

Summing up the discussion thus far, it can be noted that the actions of the legislator aimed at providing protection for the most extensive group possible. This protection is of a comprehensive character and does not focus on one group in the Church community. Incidents and scandals with vulnerable persons forced the legislator to undertake rapid actions. This is visible in the case of amendments to successive provisions of the canon law. Introduction of the term "vulnerable persons" and its legal definition into the canon law system reflected the intents and designs of the legislator. Based on the above analyses, it can be said that

55 C. Papale, *I delitti contro la morale*..., p. 56.

"vulnerable persons" enjoy appropriate protection in the canon system and the order of the Catholic Church.

3. Sexual abuse – forbidden acts

The current regulations of the canon law indicate constructive components of Church crime. "No one can be punished unless the commission by him or her of an external violation of a law or precept is gravely imputable by reason of malice or of culpability."[56] Intent and malice are preconditions for commitment of the crime of sexual abuse by an active subject, as is the external component that leads to commitment of sexual abuse. At the very beginning, we should show the nature of the said crime. Many authors have different opinions concerning the nature of that behaviour. According to Magdalena Czuba, sexual abuse means drawing a child into a sphere of sexual activities inadequate for their developmental stage, into a sphere of activities that the child does not understand and cannot accept, and which violate legal and social standards at the same time.[57] In Manfred Lütz's opinion, the sexual abuse committed by a clergyman is treated as a special type of incest, due to the relation between the priest and that person, which is of a paternal character. Perpetrator-priests frequently assume the role of a father in their relations with youth, so sexual abuse is of an incestuous nature, which makes it even more terrible.[58] Ewa Kusz points out the consequences of the discussed act. She emphasises that it has a destructive character for the abused person, the perpetrator of the abuse, and the community of the universal and local Church. This destruction and its consequences are very deep, because sexual abuse results in a specific type of trauma.[59] Dariusz Borek defines sexual abuse as all sexual activities committed by a clergyman in relation to persons protected by the provisions of the canon law.[60] This view is consistent with the opinions expressed by other experts, such as Velasio de Paolis, John Paul Kimes, Gerardo Carrasco Núñez, and Claudio Papale.[61]

56 KPK, can. 1321 § 2.

57 M. Czub, *Zrozumieć dziecko wykorzystane seksualnie*, Gdańsk 2015, p. 19.

58 M. Lütz, *Conclusion, Sexual Abuse, Science and the Church*, in: K. Hanson, F. Pfäfflin, M. Lütz (eds.), *Sexual Abuse in the Catholic Church…*, pp. 216–219.

59 E. Kusz, *Wykorzystanie seksualne małoletnich przez osoby duchowne – analiza zjawiska*, "Dziecko krzywdzone. Teoria, badania, praktyka" 14 (2015) 1, pp. 31–32.

60 D. Borek, *Delicta graviora*..., p. 57.

61 V. de Paolis, *Delitti contro il sesto comandamento*, "Periodica" (1993) 82, pp. 293–316; G. Núñez, *La competencia penal*..., p. 383; J.P. Kimes, *Simul et cura et solerita le essential norms della*

Sexual harassment is a very special type of sexual abuse. It can be classified as indirect or direct. Indirect sexual harassment occurs when a clergyman intends to achieve sexual arousal or satisfaction involving persons protected by law. It also includes behaviours in which physical contact does not occur. This can be, for example, showing pornographic pictures or films, unsuitable jokes or comments of a sexual character, a perpetrator exposing themselves, a perpetrator masturbating in front of the protected person, describing a lewd act to a minor or other persons, and the use of teleinformation tools and audiovisual means, such as webcams, chatlines, telephones, email, social media, and other tools facilitating communication.[62] In the Polish criminal law, one such example of indirect harassment is grooming.[63] Direct harassment is understood as a physical contact of a perpetrator with their victim. All forms of touching, kisses, rubbing against another person when dressed or undressed, and all forms of sexual intercourse, as well as vaginal, oral, or anal sexual penetration. Gestures and behaviours do not have to focus on a victim's private parts; it is enough that the behaviour is associated with the perpetrator's intent to achieve sexual arousal or satisfaction. Specific, direct behaviours accompany harassment of 'vulnerable persons.' According to Estera Twardowska-Staszek, perpetrators do not select their victims randomly, but intentionally seek persons of this type. For this purpose, they befriend their families, offer assistance, and sometimes even offer financial support. In special cases, they take jobs at schools, welfare centres, elderly homes, or sanatoriums to facilitate their access to potential victims. Therefore, five stages of behaviours leading to harassment of "vulnerable persons" can be distinguished.[64]

Conferenza Episcopale Statunitense, in: C. Papale (ed.), *I delitti riservati alla Congregazione per la Dottrina Della Fede. Norme prassi obiezioni*, Roma 2015, pp. 28–29.

62 E. Parolari, *Aspetti psicopatolgici dei delitti canonici*, in: D. Cito (ed.) *Questioni attuali di diritto penale canonico*, Citta del Vaticano 2012, p. 69.

63 A. Sakowicz, *Znamiona określające czynność sprawczą przestępstwa groomingu*, "Sąd Najwyższy Rzeczypospolitej Polskiej. Studia i analizy Sądu Najwyższego. Przegląd orzecznictwa" 2016, pp. 421–422: "Involving initiation of contact with a minor below 15 years of age through a teleinformation system or a telecommunication network, aiming at meeting with them, by misleading them, exploiting a mistake or inability to sufficiently understand the situation, or by using illegal threat, when the perpetrator's intent is to commit the crime specified in Article 197 § 3.2 of the Criminal Code, or Article 200 of the Criminal Code, as well as producing or recording pornographic content. The provision of Article 200a § 2 of the Criminal Code criminalises behaviours involving making a proposal through a teleinformation system or a telecommunication network of a sexual relation, or of subjecting to or performing other sexual activity to a minor below 15 years of age, presenting the performance of a sexual act or participation in the production or recording of pornographic content to a minor below 15 years of age, provided that the perpetrator undertakes behaviours aiming at implementing that proposal."

64 E. Twardowska-Staszek, *Sprawcy wykorzystania seksualnego...*, pp. 34–35.

The first phase is associated with seduction. It starts with establishing a bond with a "vulnerable person" and their family. The perpetrator develops emotional bonds based on trust and kindness. During that time, manipulation by demonstrating care, interest, and sympathy occurs, while on the other hand the perpetrator crosses the barrier of physical contact. When the sexual interaction occurs, this is the beginning of the second stage. The perpetrator accustoms their victim to touch, usually while assisting in activities related to personal hygiene, during tasks performed together, walks or playing. The limits are shifted significantly, because apart from touching, kisses, mutual touching of private parts, and sometimes even sexual intercourse occur. The perpetrator, executing their lewd behaviours, encourages their victim to keep them secret, and this is characteristic of the third stage. During this stage, the perpetrator wants to keep their relations with the victim secret at all costs. The perpetrator is aware of the social, moral, and legal consequences of their actions. The vulnerable person (a child, an adolescent, or a person who is elderly, dependent on alcohol, or unable to resist the perpetrator) keeps the secret because they feel ashamed, helpless, guilty, and afraid. The fourth stage begins with the disclosure of the perpetrator's behaviours. "Vulnerable persons" themselves rarely report sexual abuse. In the case of its discovery, parents, teachers, caregivers and other employees providing daily care to "vulnerable persons" play a very important role. Such a discovery is a very difficult emotional experience, not only for the victim, but also for their family or caregivers. When a secret related to sexual abuse is disclosed, psychological assistance must be provided to the victim and their family and friends. The last stage is associated with suppression. During this stage, the perpetrator does everything possible to avoid criminal responsibility for their behaviour. They deny that any sexual abuse took place. The suppression is an attitude shared by the perpetrator, the victim, and their environments. The perpetrator is afraid of the consequences and changes their *modus operandi*. They establish relations with a caregiver of vulnerable persons. They build for themselves the image of a kind and trustworthy person, to scare or force the victim to remain silent. They may use threats, such as "if you say anything, I will destroy your family, stop liking you, tell others what you did to me," etc.

4. Signs of sexual abuse

Usually, the experience of sexual abuse of "vulnerable persons" leaves specific traces. The criminal offence disrupts their emotionality and way of functioning, as well as of establishing social relations. In the case of indirect harassment, the signs of behaviour of this type may not be visible. Perpetrators use behaviours of this type because "vulnerable persons" usually have communication disorders, and sometimes

are persons unable to judge the situation, let alone the manipulation to which they are subjected. The situation is completely different in the case of direct harassment, which may cause mental and behavioural, as well as physical symptoms.[65]

4.1. Mental and behavioural signs

Vulnerable persons have a very complex mental and behavioural sphere. They use basic communication measures through gestures, moans, screams, and emotional signs. In many cases, they are inconsistent with non-verbal communication. Caregivers need to know how to read the signs made by a given person. A lack of knowledge of a way of communication or a lack of skills in this area usually makes communication difficult. By observing the behaviours of victims and correctly reading the signs made by them, evidence of sexual abuse can be found. In the victim, they are as follows: first, their mood is depressed, they clam up and isolate from their environment. The victims feel fear and anxiety, they become emotionally labile, nervous, and prone to angry outbursts. Furthermore, inhibitions or visible hyperactivity in the psychomotor area develop. Psychosomatic signs are visible in the form of pain, pain in the abdomen or lower abdomen, or headaches. In extreme cases, a fear of falling asleep and nightmares can occur. Some people may wet their bed at night, or demonstrate regressive behaviours and post-traumatic stress disorder (PTSD). In some cases, a reaction to sexual abuse may take the form of alcohol consumption or drug use, committing offences, suicidal thoughts and suicide attempts, and a tendency to sexuallyabuse other people.[66]

4.2. Physical signs of possible sexual abuse

In the physical dimension, the signs of sexual abuse may have various forms. Sexual intercourse may result in an unplanned pregnancy. Furthermore, the perpetrator's genetic material can be present in various body parts, including in the vulnerable person's anus, mouth, vagina, or on their body. In extreme cases, direct harassment may lead to infection with a sexually transmitted disease, including syphilis, gonorrhoea, chlamydia, or HIV. The vulnerable person's caregivers or family should be alarmed by infections of the urinary and reproductive tracts, injuries, abrasions, scratches, and bruises in the region of the vagina, testicles, or the anus, as well as by bleeding from the genitals, pain during urination, passing stool or when sitting up, and finally, by

65 M. Babik, *Seksualność osób niepełnosprawnych*, in: *Niedostępne. Niedogodne. Niedyskretne...*, pp. 7–24.

66 K. Besiekierska, *Oznaki wykorzystania seksualnego*, in: *Niedostępne. Niedogodne. Niedyskretne…*, pp. 47–54.

infections and injuries of the oral cavity and lips. The listed signs are of a general character and do not have to directly imply the fact of experiencing sexual harassment.[67]

5. Conclusion

The provisions of the Church legislation provided protection for vulnerable persons. However, it should be emphasised that this term and its definitions were introduced into the legal system only in 2019. Before that date, the term "vulnerable persons" was not used in the provisions of the canon law. Nevertheless, the legislator provided protection for persons of this type. The legislator intuitively protected various groups, such as children, adolescents, a human foetus, a woman – by protecting her against abduction – and people who wanted to commit suicide. Special protection was provided to people sexually abused by clergymen. The conducted analysis showed that the quality of this protection varied through the decades. Disclosure of sexual scandals involving clergymen forced the legislator to react again. First, comprehensive protection was provided to minors. The provisions of the canon criminal, substantive, and procedural law ensured the safety of that group in particular. Successive scandals involving clergymen, this time affecting "vulnerable persons," forced the popes to react accordingly. It should be emphasised that sexual abuse committed by clergymen is the most severe form of church offence – *delicta graviora*. In consequence of the introduction of the term "vulnerable persons" together with its legal definition, the current legislation ensures the freedom and safe development of particularly vulnerable persons, and protects them against direct and indirect harassment. This term covers children, youth, disabled persons, adults dependent on alcohol or drugs, women and men who were given a rape drug, persons who are elderly, suffered a stroke or apoplexy, residents of nursing homes, infirm persons, persons using sanatoriums, and those that cannot handle the aggression of the perpetrator. Further studies discussed in this article presented active and passive subjects, who form a construction of the discussed crime, as well as its scope, i.e., behaviours indirectly and directly resulting in sexual abuse. The study was completed with considerations regarding the signs of sexual abuse, which occur in two dimensions: behavioural and mental, and physical. The conducted analysis to some extent filled the existing research gap in the area of criminal and canon law. Furthermore, it should be emphasised that persons responsible for the legal system and the order of the Catholic Church should remain constantly vigilant and identify possible threats to "vulnerable persons."

Translated by Zofia Rusiecka

67 Ibidem, p. 51.

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THE CRIME OF SEXUAL EXPLOITATION OF "VULNERABLE PERSONS" UNDER THE CURRENT PROVISIONS OF CANON LAW

Summary

The legislator has introduced the term "vulnerable persons" to the canon law. It was implemented into the legal system of the Catholic Church only in 2019. The legislator provided a legal definition of this term. The intervening term indicates persons who have been given protection from the crime of sexual abuse. This study had two aims. Its primary objective was to describe those people in the Church community to whom the term "vulnerable person" refers. Its secondary objective was to present, on the basis of an analysis of the canon law, the extent of protection of "vulnerable persons" against the crime of sexual abuse. Appropriate research methods were used to conduct the study. These included the dogmatic-legal method, the historical method, the philological method, the comparative method, and the analytical methods used in psychological and criminological sciences. The narrative created in the article showed that the category of "vulnerable persons" includes a variety of people, such as children, adolescents, people with disabilities, the elderly, women and men addicted to alcohol or psychoactive drugs, residents of nursing homes and sanatoriums, and people who are unable to resist the aggression of the perpetrator. The current provisions of the canon law comprehensively protect the aforementioned persons against the crime of sexual abuse. Therefore, the legislator, together with the bodies subordinate to it, should constantly monitor the phenomenon of sexual exploitation and adapt the laws accordingly, so that they continue to ensure the freedom, safety, and protection of vulnerable persons and punish perpetrators with appropriate criminal sanctions.

Keywords: vulnerable persons, canon criminal law, sexual abuse, protection of vulnerable persons in the Catholic Church, canon law

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