

THE MEANING OF THE PHRASE “THE SIXTH COMMANDMENT OF THE DECALOGUE” IN CANON 1395 OF THE 1983 CODE OF CANON LAW

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SOMMARIO: *Il significato dell'espressione „sesto comandamento del Decalogo” nel canone 1395 del Codice di Diritto Canonico del 1983.* Questo saggio si propone di spiegare il significato dell'espressione „sesto comandamento del Decalogo” che si trova nel canone 1395 del Codice di Diritto Canonico del 1983. Per perseguire questo obiettivo, il saggio inizia spiegando innanzitutto come la tradizione canonica intendeva questa frase prima della promulgazione del Codice di diritto canonico del 1917. Durante questo periodo, l'espressione è stata usata come circonlocuzione per descrivere vari reati sessuali, come l'adulterio, lo stupro, il concubinato, l'incesto, i rapporti sessuali tra persone dello stesso sesso, il rapporto anale tra un uomo e una donna, la masturbazione, la bestialità e così via. Il saggio spiega poi come la frase è stata intesa nel Codice di Diritto Canonico del 1917. All'epoca, l'espressione significava rapporti sessuali con minori di sedici anni, ma includeva anche l'adulterio, lo stupro, la bestialità, la sodomia, la prostituzione e l'incesto. L'espressione è stata usata anche come circonlocuzione per descrivere vari reati sessuali non espressamente menzionati nel canone 2359. Dopo questa presentazione, il saggio spiega brevemente come la Congregazione del Sant'Uffizio ha affrontato questa frase. È interessante sapere che il termine *crimen pessimum* era usato come

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circonlocuzione per descrivere i crimini contro il sesto comandamento del Decalogo. Infine, il saggio spiega il significato di questa frază la luce del canone 1395 del Codice di Diritto Canonic del 1983. Ci sono comentatori del canone che ofrono qualche spiegate pentru questa frază, mentre altri la usano senza alcuna spiegate. L'espressione, secondo l'autore del saggio, è una circonlocuzione per descrivere alcuni reati sessuali, che non sono espressamente menzionati in questo canone.

Parole chiave: delitto, comandamento, decalogo, canone, chierico, codice, legge, concubinatu, abuz, tradiție.

REZUMAT: *Înțelesul frazei „porunca a șasea a Decalogului” din canonul 1395 din Codul de Drept Canonic din 1983.* Acest eseu își propune să explice semnificația expresiei „porunca a șasea a Decalogului”, așa cum se găsește în canonul 1395 din Codul de Drept Canonic din 1983. Pentru a urmări acest obiectiv, eseuul începe prin a explica mai întâi cum înțelegea tradiția canonică această frază înainte de promulgarea Codului de Drept Canonic din 1917. În această perioadă, această frază a fost folosită ca o circumlocuțiune pentru a descrie delictes sexuale variate, cum ar fi adulterul, violul, concubinajul, incestul, relații sexuale între persoane de același sex, relații sexuale anale între un bărbat și o femeie, masturbarea, bestialitatea și așa mai departe. Apoi, eseuul explică modul în care fraza a fost înțeleasă în Codul de Drept Canonic din 1917. În această perioadă, sintagma însemna relații sexuale cu minori sub vârsta de șaisprezece ani, dar includea și adulterul, violul, bestialitatea, sodomia, prostituția și incestul. De asemenea, sintagma a fost folosită ca o circumlocuțiune pentru a descrie delictes sexuale variate, care nu erau menționate în mod expres în canonul 2359. După, această prezentare, eseuul explică pe scurt modul în care *Congregația Sfântului Oficiu* a abordat această sintagmă. Este destul de interesant să aflăm că termenii *crimen pessimum* erau folosiți ca o circumlocuțiune pentru a descrie delictes împotriva porunci a șasea a Decalogului. În cele din urmă, eseuul explică semnificația acestei fraze în lumina canonului 1395 din Codul de drept canonic din 1983. Există comentatori canonici ai acestui canon, care oferă o anumită explicație pentru această frază, în timp ce alții o folosesc fără nicio explicație. Expresia, în opinia autorului eseului, este o circumlocuțiune pentru a descrie ale delictes sexuale, care nu sunt menționate în mod expres în acest canon.

Cuvinte-cheie: delict, poruncă, Decalog, canon, cleric, cod, lege, concubinaj, abuz, tradiție.

Introduction

The Church has been and continues to be accused of giving too much importance to the offenses against the sixth commandment of the Decalogue. In contrast with this opinion, one who reads Book VI of the *Code of Canon Law*² will find no laws which punish the offenses against the sixth commandment of the Decalogue as such. The penal system of the Church considers as offenses against this matter only specific behaviors of the clergy which are mostly, but not entirely, connected to the sacrament of penance. There are two canons that envision penalties for offenses against the sixth commandment not related to the sacrament of penance, namely, canon 1395 and canon 1398 of the 1983 Code. Thus, there is no need to exaggerate the importance given to such a theme³. On the other hand, it must be taken into consideration that the meaning of the phrase “the sixth commandment of the Decalogue” used in canon 1395 of the 1983 Code is not entirely clear. Therefore, it is necessary to analyze the meaning of this phrase in order to understand what kind of behaviors 1395 of the 1983 Code penalizes by this phrase.

In the light of what was said above, the purpose of the present paper is to try to analyze the meaning of the phrase “the sixth commandment of the Decalogue” used in canon 1395 of the 1983 Code. The first part of the paper will present a short historical background with regard to the meaning of “the sixth commandment of the Decalogue” from a canonical point of view. Then, the second part of the paper will analyze the meaning of the phrase “the sixth commandment of the Decalogue” used in canon 1395 of the 1983 Code. At the end, a short conclusion will summarize the entire presentation.

² *Codex Iuris Canonici auctoritate Ioannis Pauli PP II promulgatus* Vatican City 1983. English translation from *Code of Canon Law, Latin-English Edition: New English Translation*, Washington, DC 1998. Hereafter cited as 1983 Code. All subsequent English translation of canons from this code will be taken from this source unless otherwise indicated.

³ V. de Paolis, *Delitti contro il sesto comandamento*, *Periodica* 82, 1993, 293.

Part I. Short Historical Background with Regard to the Meaning of the phrase “the Sixth Commandment of the Decalogue” from a Canonical Point of View

a. The pre-1917 Code Period

Traditionally, the Church has penalized the sexual misconduct of lay people, religious persons and clergy. Yet, a special attention was given in this regard to the married Christians because of the violation of their conjugal consent and to the religious persons and clergy because of the violation of their vows or promises of continence and celibacy.

Thus, for instance, *Corpus Iuris Canonici* abounded in references with regard to the prohibition and penalization of fornication, adultery, prostitution, the sin *contra natura*, etc.

However, a special care was taken to penalize the sexual misconduct of clergy, especially, those *in sacris ordinibus* because of their promise to observe sexual continence and for the bad example given by them to the lay Christian faithful entrusted to their care⁴.

Overall, the canonists in the pre-1917 Code period had progressively delimited the different kinds of delicts for sexual misconduct⁵: adultery, rape, fornication, concubinage, incest, carnal sacrilege, the so-called sins *contra natura* including the sodomy, understood in its strict meaning as sexual relationship between persons of the same sex, and in the other meaning as anal coitus between a man and a woman, then, masturbation, bestiality and so on. Additionally, this period the generic reference “against the sixth commandment of the Decalogue” began to be used as a circumlocution in order to describe varied sexual delicts. However, the reference, offenses against “the sixth commandment of the Decalogue,” was not used by all canonists of the pre-1917 Code period⁶.

⁴ F. R. Aznar Gil, *Delitos de los Clérigos el Sexto Mandamiento*, Salamanca 2005, 18-19. See also J. H. Provost, *Offences Against Sixth Commandment: Toward a Canonical Interpretation of Canon 1395*, *The Jurist* 55, 1995, 634-635.

⁵ Provost, *Offences Against Sixth Commandment: Toward a Canonical Interpretation of Canon 1395*, 635-641.

⁶ Aznar Gil, *Delitos de los Clérigos el Sexto Mandamiento* 21.

b. Canon 2359 of the 1917 Code of Canon Law⁷

The 1917 Code, in keeping with the canonical tradition, has penalized the sexual misconduct of both lay Christian faithful and clergy⁸. Nonetheless, this paper, in keeping with its purpose, will analyze only canon 2359 of the 1917 Code, namely, the meaning of the phrase “the sixth commandment of the Decalogue” used in this canon. In fact, canon 2359 stated:

§ 1. Concubinous clerics in sacred [orders], whether secular or religious, previous warnings not being heeded, are to be coerced into giving up their illicit relationship and to repair scandal by [being] suspended from divine things [and by suffering] the loss of the benefits of office, benefices, and dignities, the prescriptions of Canons 2176-2181 being observed.

§ 2. If they engage in a delict against the sixth precept of the Decalogue with a minor below the age of sixteen, or engage in adultery, debauchery, bestiality, sodomy, pandering, incest with blood-relatives or affines in the first degree, they are suspended, declared infamous, and are deprived of any office, benefice, dignity, responsibility, if they have such, whatsoever, and in more serious cases, they are to be deposed.

§ 3. If they have otherwise committed an offense against the sixth commandment of the Decalogue, let them be restrained by appropriate penalties according to the severity of the case, not including the privation of their office or benefit, especially if they take care of their souls⁹.

⁷ *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus*, Rome 1917. Henceforth called the 1917 Code. English translation from *The Pio-Benedictine Code of Canon Law, in English Translation with Extensive Scholarly Apparatus*, San Francisco 2001. All subsequent English translation of canons from this code will be taken from this source unless otherwise indicated.

⁸ 1917 Code, canons 2356-2359.

⁹ Can. 2359, „§ 1. Clerici in sacris sive saeculares sive religiosi concubinarij, monitione inutiliter praemissa, cogantur ab illicito contubernio recedere et scandalum reparare suspensione a divinis, privatione fructuum officij, beneficij, dignitatis, servato praescripto can. 2176-2181.

The first paragraph of this canon dealt with the subject of clerical concubinage. The second paragraph addressed specific crimes: offences against the sixth commandment with minors below the sixteen of age, but also, adultery, rape, bestiality, sodomy, prostitution, and incest. Finally, paragraph three, by using the phrase *aliter contra sextum decalogi praeceptum deliquerint*, seems to refer to any other external and grave offenses against the sixth commandment not specified in the first two paragraphs¹⁰.

The meaning of the phrase *sextum decalogi praeceptum* used in the third paragraph of canon 2359 should be understood in a technical sense, that is, the delict *contra natura* or the delict committed with a minor, or as a circumlocution, which includes various kinds of sexual crimes not expressly cited by canon 2359¹¹. Also, it is important to mention that “historically there is no consistent use of the phrase. It does seem to have been gradually introduced by commentators, then later in the text of the code both in a technical sense and as a circumlocution”¹².

c. The Practice of the Congregation of the Holy Office

The Congregation of the Holy Office used the terms *crimen pessimum* as a circumlocution to describe “offenses against the sixth commandment of the Decalogue”¹³. Additionally, the *Congregation of the Holy Office* “claimed

§ 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.

§ 3. Si aliter contra sextum decalogi praeceptum deliquerint, congruis poenis secundum casus gravitatem coerceantur, non excepta officii vel beneficii privatione, maxime si curam animarum gerant”.

¹⁰ Aznar Gil, Delitos de los Clérigos el Sexto Mandamiento 22.

¹¹ Aznar Gil, Delitos de los Clérigos el Sexto Mandamiento 22.

¹² Provost, Offences Against Sixth Commandment: Toward a Canonical Interpretation of Canon 1395 650.

¹³ Provost, Offences Against Sixth Commandment: Toward a Canonical Interpretation of Canon 1395 650.

exclusive administrative competence to try cases involving this crime, and required diocesan tribunals to notify it in the event they tried a case on judicially on these grounds”¹⁴.

Moreover, the Congregation of the Holy Office understood the crime as consisting in any “gravely sinful external obscene deed perpetrated or attempted in any manner by a cleric with a person of the same sex”¹⁵. However, bestiality and acts with pre-pubescent youth of both sexes were also included in the *crimen pessimum* by the congregation. Interestingly enough it is the fact that, even though the congregation used the canons of the 1917 Code in its directives, it did not use the phrase of the Code “offense against the sixth commandment” but rather the terms *crimen pessimum*¹⁶.

In short, from what was said so far it can be noticed that there was no consistency and coherent meaning for “offenses against the sixth commandment” in the canonical tradition that preceded the promulgation of the 1983 Code¹⁷.

Part II Canon 1395 of the 1983 Code of Canon Law and the Sixth Commandment of the Decalogue

a. The Text of Canon 1395 and a commentary

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.

¹⁴ Provost, *Offences Against Sixth Commandment: Toward a Canonical Interpretation of Canon 1395* 648.

¹⁵ A. Yanguas, *De crimen pessimo et competentia Sti. Officii relate ad illud*, *Revista Española de Derecho Canónico* 1 (1946) 427-439 in Provost, *Offences Against Sixth Commandment: Toward a Canonical Interpretation of Canon 1395* 648.

¹⁶ Provost, *Offences Against Sixth Commandment: Toward a Canonical Interpretation of Canon 1395* 650.

¹⁷ Provost, *Offences Against Sixth Commandment: Toward a Canonical Interpretation of Canon 1395* 649.

§ 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.

§ 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 § 2¹⁸.

The first delict addressed by paragraph one of canon 1395 deals with the grave acts consummated by lust, which are against the sixth commandment of the Decalogue and the subject of these acts is the cleric. These acts when they are perpetrated by a cleric bear the nature of sacrilege. It is so because in order to be acts of natural lust, sexual intercourse is required, as it is in the act of the marriage consummation. There could be rape, incest, fornication and concubinage, which have as a common element the sexual intercourse, to which there must be added the specific element that distinguishes them from each other¹⁹. It is particularly specified in this paragraph the situation of concubinage, which is defined as “an ongoing non-marital sexual relationship between a cleric and a woman, married or single”²⁰. This does not mean necessarily that the cleric lives under the same roof with the woman²¹. Also, it does not necessarily

¹⁸ Can. 1395, „§ 1. Clericus concubinarius, praeter casum de quo in can. 1394, et clericus in alio peccato externo contra sextum Decalogi praeceptum cum scandalo permanens, suspensione puniatur, cui, persistente post monitionem delicto, aliae poenae gradatim addi possunt usque ad dimissionem e statu clericali.

§ 2. Clericus qui aliter contra sextum Decalogi praeceptum deliquerit, si quidem delictum publice patratum sit, iustis poenis puniatur, non exclusa, si casus ferat, dimissione e statu clericali.

§ 3. Eadem poena de qua in § 2 puniatur clericus qui vi, minis vel abusu suae auctoritatis delictum committit contra sextum Decalogi praeceptum aut aliquem cogit ad actus sexuales exsequendos vel subeundos”.

¹⁹ Fr. Nigro, Titulus V: De Delicta Contra Speciales Obligationes, in *Commento al codice di Diritto Canonico*, ed. Pio V. Pinto, Città del Vaticano 2001, 827.

²⁰ Green, Sanctions in the Church, in *New Commentary on the Code of Canon Law*, ed. John P. Beal et. al., New York/Mahwah, NJ 2000, 1599.

²¹ Cf. William H. Woestman, *Ecclesiastical Sanctions and the Penal Process. A Commentary on the Code of Canon Law*, second ed., revised and updated, Ottawa 2003 148.

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mean that both of them are free; namely, that none of them is bound by a valid marriage. Given that, if the woman is married, there could also be the case of an adultery or bigamy²². The second situation addressed in this paragraph concerns “other external sin against the sixth commandment of the Decalogue” committed by a cleric. In order to be qualified as a delict, the cleric must persist in this sin, hence it must be an ongoing act, not an isolated or singular one. It is also characterized as a sin that causes scandal; hence it must be public at least to some extent. The exact meaning of the phrase “other sin” is not entirely clear. There could be an ongoing homosexual relationship²³, adultery, sodomy, bigamy, etc.²⁴

Paragraph two of canon 1395 deals with the case in which a cleric commits a delict against the sixth commandment of the Decalogue in public. The phrase “in public” means that it well known and it could be easily proven with proofs and/or witnesses. Additionally, the paragraph states that if a cleric “has offended in other ways against the sixth commandment of the Decalogue”, which seems to include other situations than those from the first paragraph of this canon, such as in the case of production, exhibition, possession or distribution, including by electronic means, of pornography.

Paragraph three of canon 1395 states certain situations in which a cleric can commit delicts against the sixth commandment of the Decalogue, namely; on the one hand, by using force, threats or abusing his authority in order to commit such delicts, and, on the other hand, forcing a person to perform or to submit to sexual acts. At least one of these conditions must be verified in committing the delict against the sixth commandment of the Decalogue. However, it may happen that in a particular situation more than one condition may be present: for example, the offense was committed by abusing the authority and with force. Then, since penal laws are subject to strict interpretation,²⁵ no other offences against the sixth commandment are penalized by this paragraph. Nevertheless, as it was already said, the meaning of the phrase the “sixth commandment of the Decalogue” used by canon 1395 is not entirely clear.

²² Nigro, *Titulus V: De Delicta Contra Speciales Obligationes* 827.

²³ Green, *Sanctions in the Church* 1599.

²⁴ Nigro, *Titulus V: De Delicta Contra Speciales Obligationes* 827.

²⁵ 1983 Code, canon 18.

Therefore, it would be good to see what the commentators on the 1983 Code say in this regard.

***b. Commentaries on the Meaning of the Phrase the
“Sixth Commandment of the Decalogue” in Canon 1395***

Some authors suggest to look at what was biblically and traditionally understood and included in this phrase “sixth commandment of the Decalogue” in order to understand the concrete behaviors penalized by canon 1395 by using this phrase²⁶. Also, one canonical commentator suggests to look at what says in this regard the *Catechism of the Catholic Church*²⁷. He notices that in the presentation of the sixth commandment, the catechism does not limit the meaning of the phrase only to adultery, but to a series of offenses against sexuality in general or in relationship with chastity²⁸. Thus, the catechism states that:

Chastity means the successful integration of sexuality within the person and thus the inner unity of man in his bodily and spiritual being. Sexuality, in which man’s belonging to the bodily and biological world is expressed, becomes personal and truly human when it is integrated into the relationship of one person to another, in the complete and lifelong mutual gift of a man and a woman.

The virtue of chastity therefore involves the integrity of the person and the integrality of the gift²⁹.

After this definition of chastity, the catechism points out the sins against chastity, providing some explanation for each sin. According to the catechism “lust is disordered desire for or inordinate enjoyment of sexual pleasure. Sexual pleasure is morally disordered when sought for itself, isolated from its procreative and unitive purposes”³⁰. Then, according to the same catechism:

²⁶ J. S. Grabowski, Clerical Sexual Misconduct and Early Traditions Regarding the Sixth Commandment, *The Jurist* 55, 1995, 527-591. See also J. Tuohey, The Correct Interpretation of Canon 1395: the Use of the Sixth Commandment in the Moral Tradition from Trent to the Present Day, *The Jurist* 1995, 592-631.

²⁷ *Catechism of the Catholic Church*, Washington, DC: USCCB, 1994, no. 2331-2400.

²⁸ Aznar Gil, Delitos de los Clérigos el Sexto Mandamiento 29-30.

²⁹ *Catechism of the Catholic Church* 2337.

³⁰ *Catechism of the Catholic Church* 2351.

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Fornication is carnal union between an unmarried man and an unmarried woman. It is gravely contrary to the dignity of persons and of human sexuality which is naturally ordered to the good of spouses and the generation and education of children. Moreover, it is a grave scandal when there is corruption of the young.

Pornography consists in removing real or simulated sexual acts from the intimacy of the partners, in order to display them deliberately to third parties. It offends against chastity because it perverts the conjugal act, the intimate giving of spouses to each other. It does grave injury to the dignity of its participants (actors, vendors, the public), since each one becomes an object of base pleasure and illicit profit for others. It immerses all who are involved in the illusion of a fantasy world. It is a grave offense. Civil authorities should prevent the production and distribution of pornographic materials.

Prostitution does injury to the dignity of the person who engages in it, reducing the person to an instrument of sexual pleasure. The one who pays sins gravely against himself: he violates the chastity to which his Baptism pledged him and defiles his body, the temple of the Holy Spirit. Prostitution is a social scourge. It usually involves women, but also men, children, and adolescents (The latter two cases involve the added sin of scandal.). While it is always gravely sinful to engage in prostitution, the imputability of the offense can be attenuated by destitution, blackmail, or social pressure.

Rape is the forcible violation of the sexual intimacy of another person. It does injury to justice and charity. Rape deeply wounds the respect, freedom, and physical and moral integrity to which every person has a right. It causes grave damage that can mark the victim for life. It is always an intrinsically evil act. Graver still is the rape of children committed by parents (incest) or those responsible for the education of the children entrusted to them.

Homosexuality refers to relations between men or between women who experience an exclusive or predominant sexual attraction toward persons of the same sex. It has taken a great variety of forms through the centuries and in different cultures. Its psychological genesis remains largely unexplained. Basing itself on Sacred Scripture, which presents homosexual acts as acts of grave depravity, tradition has always declared that homosexual acts are intrinsically disordered. They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved³¹.

³¹ *Catechism of the Catholic Church* 2353-2357.

Other canonical commentators on this canon, in attempting to explain the meaning of the phrase “sixth commandment of the Decalogue,” turn to virtues. Thus, they refer either to chastity or purity³². Still other commentators just repeat the phrase “offense against the sixth commandment of the Decalogue” with no explanation of the phrase. Others, at least, give some examples³³.

Finally, a canonical commentator is the opinion that:

The use of the phrase “crimes against the sixth commandment” in the 1983 Code has to be interpreted in keeping with the “proper” meaning of the words taken in their context (canon 17). If proper meaning of the “sixth commandment” is the technical one, the crimes proscribed by canon 1395 would be limited to those which clerics commit with married persons. However, it can be also argued that a “proper” meaning of “crimes against the sixth commandment” is the circumlocution also used in the 1917 Code³⁴.

From what was said so far, it appears clear enough that it is not easy task even for commentators on canon 1395 to explain the meaning of the phrase “offense against the sixth commandment of the Decalogue.” What is clear in canon 1395 is the fact that all the external offense of the sixth commandment of the Decalogue are delicts, provided that they have some characteristics, for instance, the offense was committed by a cleric using force, threats or abusing his authority in order to commit such delicts, but also, by forcing a person to perform or to submit to sexual acts³⁵. Also, the other requirements stated in the canon have to be present in order to have such a delict.

³² Th. J. Green, Sanctions in the Church (cc.1331-1399), in *The Code of Canon Law: A Text and Commentary*, ed. James A. Coriden et al., New York/Mahwah, NJ 1985, 929. See also O. Échappé, *Droit Canonique*, Précis Dalloz, Paris 1989, 476-477 in Provost, *Offences Against Sixth Commandment: Toward a Canonical Interpretation of Canon 1395*, 658.

³³ L. Chiappetta, *Il Codice di Diritto Canonico: Commento giuridico-pastorale*, seconda ed. accresciuta e aggiornata, vol. II, Roma 1996, 686. He gives homosexuality as an example of another „offense against the sixth commandment of the Decalogue”.

³⁴ Provost, *Offences Against Sixth Commandment: Toward a Canonical Interpretation of Canon 1395*, 660. Also, for a broader discussion on the issue treated in this part of the paper see Provost, *Offences Against Sixth Commandment: Toward a Canonical Interpretation of Canon 1395*, 657-663.

³⁵ De Paolis, *Delitti contro il sesto comandamento* 305-306.

c. Terminology: External vs. Internal; Public vs. Occult; Occasional vs. Permanent; Sin vs. Delict; Sexual Abuse with Regard to the “Sixth Commandment of the Decalogue” in Canon 1395

Furthermore, it is important to point out that for a better understanding of canon 1395 of the 1983 Code certain terms should be explained. Thus, it is necessary to be emphasized that there is a significant difference between external and internal in this context. In order to speak about an “offense against the sixth commandment of the Decalogue,” the offence must be external; namely, it must come out in the physical world. The penal law of the Church does not punish an act that is purely internal³⁶. Also, it is necessary to say that the external does not mean public because to an external act opposes an internal act, but to a public act opposes an occult act.

With regard to the distinction between public and occult, it can be said that this distinction does not have a particular juridic relevance for the notion of delict and imputability³⁷. It is true that the occult delict is not punished because it is not proven, however, the truth is that what today is occult tomorrow may become public³⁸. Also, it is worthy of note that the Church has her juridic instrument to punish the occult in the *latae sententiae* penalties³⁹.

Additionally, another distinction is between permanent and occasional. To have a delict against “the sixth commandment of the Decalogue,” the offense must be found in a permanent situation and simultaneously give scandal in the community.

Moreover, it is necessary to say that there is an important distinction between sin and delict. There is a sin when there is any violation of the sixth commandment of the Decalogue. Yet, in order to be a delict such offense, the offender must be in a permanent situation of committing the offense and simultaneously the offense must give scandal in the community. This means that the offense must be both external and public⁴⁰.

³⁶ 1983 Code, canon 1321, § 2.

³⁷ 1983 Code, canon 1330.

³⁸ De Paolis, *Delitti contro il sesto comandamento* 302.

³⁹ De Paolis, *Delitti contro il sesto comandamento* 302. See also 1983 Code, canon 1314.

⁴⁰ De Paolis, *Delitti contro il sesto comandamento* 302.

Finally, it is equally important to consider the meaning of sexual abuse. By sexual abuse there could be understood sexual molestation of a person (either minor or adult – as in the case of a vulnerable person or a person who habitually has an imperfect use of reason), sexual exploitation or other behavior by which a cleric uses a person (either minor or adult) as an object of sexual gratification (for example, to take part in pornographic exhibition)⁴¹.

Conclusion

To summarize, the meaning of the phrase “the sixth commandment of the Decalogue” used in canon 1395 of the 1983 Code is not entirely clear as the present paper tried to explain. Also, it is important to highlight that canon 1395 of the 1983 Code is to be considered within the context of the obligation of clergy to observe perfect and perpetual continence. The canon’s goal is to penalize offenses against continence and behaviors which may endanger the observance of continence. This canon does not look to internal sins, but to the external behavior which can be subject to the judgment of the diocesan bishop or, if it is the case, of the ecclesiastical judges. In this context should be seen the meaning of the phrase “the sixth commandment of the Decalogue” used in canon 1395 of the 1983 Code.

⁴¹ 1983 Code, canon 1398, § 1, 1°. See also 1983 Code, canon 1398, § 1, 2°. It would be also good to be seen in this regard the United States Conference of Catholic Bishops (USCCB), *Essential Norms for Diocesan/Eparchial Polices Dealing with Allegations of sexual Abuse of Minors by Priests of Deacons*, Washington, DC 2006, (14.07.2022) <https://www.usccb.org/resources/Charter-for-the-Protection-of-Children-and-Young-People-2018-final%281%29.pdf>. See also Th. J. Green, *The sexual Problematic in the Catholic Church in the United States: Some Canonical Reflections*, *The Jurist* 63, 2003, 366-425.