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# Bringing hidden abuse to light

## Punishing sexual and reproductive abuse of adult women by priests through canon penal law

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**Abstract:** *The abuse crisis in the Roman Catholic Church is often equated with the sexual abuse of minors. However, there is growing awareness that adults are also among those affected by sexual violence in the Church. Furthermore, when sexual abuse leads to unwanted pregnancies, female victims also experience reproductive abuse. This study aims to explore the effectiveness of canon penal law in giving protection to adult women, who were sexually and reproductively abused by Roman Catholic priests. To answer this question, an attempt will first be made to delineate the occurrence of sexual and reproductive abuse of adult women before the effectiveness of canon penal law is analyzed through the lens of European human rights law. Due to the limited scope of this study, this analysis will be limited to the question whether the sexual and reproductive abuse of adult women is punishable under canon penal law.*

**Zusammenfassung:** *Die Missbrauchskrise in der römisch-katholischen Kirche wird oft mit dem sexuellen Missbrauch von Minderjährigen gleichgestellt. Langsam wächst jedoch das Bewusstsein, dass sich unter den Betroffenen sexueller Gewalt auch Erwachsene befinden. Wenn die sexuelle Gewalt zu einer ungewünschten Schwangerschaft führt, erfahren weibliche Betroffene zudem reproduktiven Missbrauch. Vor diesem Hintergrund ist es das Ziel dieser Studie zu untersuchen, wie wirksam das kirchliche Strafrecht erwachsene Frauen schützt, die in der römisch-katholischen Kirche von Priestern sexuell und reproduktiv missbraucht wurden. Um diese Frage zu beantworten, wird zunächst die Prävalenz des sexuellen und reproduktiven Missbrauchs in der Kirche erfasst, bevor die Wirksamkeit des kirchlichen Strafrechts durch die Linse der europäischen Menschenrechte analysiert wird. Aufgrund des begrenzten Umfangs dieser Studie beschränkt sich diese Analyse auf die Frage, ob der sexuelle und reproduktive Missbrauch erwachsener Frauen im kirchlichen Strafrecht unter Strafe gestellt wird.*

**Keywords:** Abuse, Adults, Penal law

**Schlagworte:** Missbrauch, Erwachsene, Strafrecht

### 1. Introduction

Sexual abuse “[...] affects the Church and represents a serious obstacle to her mission.’ From this stems the Church’s ceaseless efforts to put an end to all kinds of abuse, starting from within.”<sup>1</sup>

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<sup>1</sup> Dicastery for the Doctrine of the Faith, “Dignitatis Infinita”, 8 April 2024, 43, URL: <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2024/04/08/240408c.html&gt;>; [last view 01.05.2024].

After the magnitude of the sexual abuse crisis in the Roman Catholic Church surfaced in 2010 through the publication of the Boston Globe report in the US, media outlets and academic research oftentimes restrict the sexual abuse crisis to minor victims. Much less attention has been paid to the fact that this crisis also affects adult victims and only slowly their accounts are coming to light.<sup>2</sup> Especially adult women tell and share their stories through publications of victim testimonials, tv documentaries, and the #NunsToo movement.<sup>3</sup> Also sexual abuse cases in which once influential and famous clerics such as Marko Ivan Rupnik, Jean Vanier, Thomas Philippe, or Marie-Dominique Philippe were exposed as abusers contributed to the public awareness that the category of abuse victims in the Church is not limited to minors.<sup>4</sup>

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<sup>2</sup> See: HEYDER, Regina; LEIMGRUBER, Ute, Spiritueller und sexueller Missbrauch an erwachsenen Frauen. Was aus den Berichten von Betroffenen zu lernen ist, in: HASLBECK, Barbara et al. (Eds.), Erzählen als Widerstand: Berichte über spirituellen und sexuellen Missbrauch an erwachsenen Frauen in der katholischen Kirche, Münster 2020, p. 187-189.

<sup>3</sup> These testimonials are usually published in non-academic publications. Therefore, much on the groundwork to establish the extent of sexual and reproductive abuse of adult female victims had to be based on non-academic sources. In addition, academic sources on the topic are still rare. See: WAGNER, Doris, *Nicht mehr ich. Die wahre Geschichte einer jungen Ordensfrau*, München 2016, p. 336. Also see: ARTE, *Gottes missbrauchte Dienerinnen*. URL: <https://www.arte.tv/de/videos/078749-000-A/gottes-missbrauchte-dienerinnen/> [last view 01.05.2024]. Also see: LEMBO, Mary, *Sexueller Missbrauch von Ordensfrauen in Afrika. Sehen, verstehen, verändern*, Münster 2024. Also see: PHOENIX, Im Namen Gottes – Frauen gegen Missbrauch in der Kirche. URL: [https://www.youtube.com/watch?v=UUa16dp3Q\\_g](https://www.youtube.com/watch?v=UUa16dp3Q_g) [last view 28.04.2025]. Also see: WAGNER, Doris; SCHÖNBORN, Kardinal Christoph, *Schuld und Verantwortung. Ein Gespräch über Macht und Missbrauch in der Kirche*, Freiburg i.Br. 2019. Also see: #FEMALEPLEASURE, #femalepleasure: Five cultures, Five women, One Story. URL: <https://www.femalepleasure.org/> [last view 01.05.2024]. Also see HASLBECK, Barbara et al. (eds.), *Erzählen als Widerstand. Berichte über spirituellen und sexuellen Missbrauch an erwachsenen Frauen in der katholischen Kirche*, Münster 2020. Also see: HEYDER; LEIMGRUBER, *Missbrauch* (see quote 3), p. 189f. Also see: WAGNER, Doris, #NunsToo. *Sexueller Missbrauch an Ordensfrauen. Fakten und Fragen*, in: *Stimmen der Zeit* 143 (2018), pp. 374-384. URL: <https://www.herder.de/stz/hefte/archiv/143-2018/6-2018/nunstoo-sexueller-missbrauch-an-ordensfrauen-fakten-und-fragen/> [last view 01.05.2001].

<sup>4</sup> See: Commission Interdisciplinaire des Frères de Saint-Jean, *Comprendre et guérir. Origines et analyses des abus dans la famille Saint-Jean* from June 2023. URL: [https://freres-saint-jean.org/wp-content/uploads/sites/2/2023/06/Comprendre\\_et\\_Guerir\\_Juin\\_2023.pdf](https://freres-saint-jean.org/wp-content/uploads/sites/2/2023/06/Comprendre_et_Guerir_Juin_2023.pdf) [last view 01.05.2024]. Also see: Study Commission mandated by L'Arche Internationale, *Control and Abuse: Investigation on Thomas Philippe, Jean Vanier and L'Arche (1950-2019)* from January 2023, pp. 35, 508, 547. URL: [https://commissiondetude-jeanvanier.org/commissiondetudeindependante2023-empriseetabus/wp-content/uploads/2023/01/Report\\_Control-and-Abuse\\_EN.pdf](https://commissiondetude-jeanvanier.org/commissiondetudeindependante2023-empriseetabus/wp-content/uploads/2023/01/Report_Control-and-Abuse_EN.pdf) [last view: 01.05.2024]. Also see: TADIÉ, Solène, *New report analyzes origins and phenomena behind abuse in France's St. John community*, in: Catholic News Agency, 2 July 2023. <https://www.catholicnewsagency.com/news/254694/new-report-analyzes-origins-and-phenomena-behind-abuse-in-the-st-john-community> [last view 01.05.2024]. Also see: HOYEAU, Céline, *Der Verrat der Seelenführer. Macht und Missbrauch in Neuen Geistlichen Gemeinschaften*, Freiburg i. Br. 2023, pp. 202-238. Also see: National Catholic Reporter, *Former Jesuit Rupnik, accused of abusing women, welcomed into Slovenia diocese from 26 October 2023*. URL: <https://www.ncronline.org/vatican/vatican-news/former-jesuit-rupnik-accused-abusing-women-welcomed-slovenia-diocese> [last view 01.05.2024].

While public awareness for the sexual abuse of women is slowly growing, it deserves mentioning that the Vatican had already been informed about the widespread sexual abuse of women religious through the reports of three religious sisters: (1) Sr. Maura O'Donohue (1994), a religious sister of the Medical Missionaries of Mary, who in her function as AIDS Coordinator for the Catholic Fund for Overseas Development, notified the prefect of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, Cardinal Eduardo Martinez Somalo about the abuse of women religious on various continents, (2) Sr. Marie McDonald (1998), a religious sister of The Missionary Sisters of Our Lady of Africa, who shared her report with the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, the Union of Superiors General, and the International Union of Superiors, and (3) Sr. Esther Fangman (2000), who while presiding over the Federation of St. Scholastica, promoted awareness for this topic during a conference in Rome which was attended by 250 abbots of the Benedictine order.<sup>5</sup> However, it is only in March 2019 during a press conference on board of the papal plane returning from the apostolic journey to the United Arab Emirates, that Pope Francis publicly recognized the sexual abuse of women religious after a special issue on this topic was published by the women's magazine of *L'Osservatore Romano*, 'Donne, chiesa, mondo', in February 2019.<sup>6</sup> Yet, Pope Francis also emphasized on that occasion that the Vatican had taken action to combat such incidents even before this public recognition and that

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<sup>5</sup> See: O'DONOHOE, Maura, Urgent Concerns for the Church in the Context of HIV/AIDS, February 1994. URL: <https://www.bishop-accountability.org/reports/1994-02-O-Donohue-Urgent-Concerns.pdf> [last view 02.03.2024]. Also see: ALLEN, John L. JR.; SCHAEFFER, Pamela, Reports of abuse: AIDS exacerbates sexual exploitation of nuns, reports allege, in: *National Catholic Reporter* from 16 March 2001. URL: [https://natcath.org/NCR\\_Online/archives2/2001a/031601/031601a.htm](https://natcath.org/NCR_Online/archives2/2001a/031601/031601a.htm) [last view 01.05.2024]. Also see: McDONALD, Marie, The Problem of the Sexual Abuse of African Religious in Africa and in Rome, 20 November 1998, in: *National Catholic Reporter* from 9 March 2001. URL: [https://natcath.org/NCR\\_Online/documents/McDonaldAFRICAreport.htm](https://natcath.org/NCR_Online/documents/McDonaldAFRICAreport.htm) [last view 01.05.2024]. Also see: WAGNER, #NunsToo (see quote 3). Also see Mount St. Scholastica, Sister Esther Fangman. URL: <https://www.mountsb.org/sister-esther-fangman/> [last view 15.05.2024]. Also see: MCGARRY, Patsy, The Irish woman who exposed abuse of nuns by priests 25 years ago, in: *The Irish Times* from 10 February 2019. URL: <https://www.irishtimes.com/news/social-affairs/religion-and-beliefs/the-irish-woman-who-exposed-abuse-of-nuns-by-priests-25-years-ago-1.3788555> [last view 15.05.2024].

<sup>6</sup> See: The Holy See, Apostolic Journey of his Holiness Pope Francis to the United States Emirates (3-5 February 2019). Press Conference on the Return Flight from Abu Dhabi to Rome: Papal Flight: Tuesday, 5 February 2019. URL: [https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco\\_20190205\\_emiratiarabi-voloritorno.html](https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190205_emiratiarabi-voloritorno.html) [last view 13.07.2024]. Also see: FRANCIS, Improvised Address of his Holiness Pope Francis to Participants at the XXI Plenary Assembly of the International Union of Superiors General (UISG), 10 May 2019. URL: [https://www.vatican.va/content/francesco/de/speeches/2019/may/documents/papa-francesco\\_20190510\\_uisg.html](https://www.vatican.va/content/francesco/de/speeches/2019/may/documents/papa-francesco_20190510_uisg.html) [last view: 01.05.2024]. Also see: GALLAGHER, Delia; BURKE, Daniel,

these actions were not only directed to clerical perpetrators but in some instances also to female congregations, for instance in cases of forced prostitution in which female superiors facilitated priests in abusing members of their congregation in exchange for financial donations.<sup>7</sup> Pope Francis refers in particular to his papal predecessor for his “*courage to dissolve a women’s congregation [...] because this slavery of women had entered, even sexual slavery, by clerics or by the founder.*”<sup>8</sup> While it is certainly true that the Roman Pontiff and his Curia have acted in at least some cases, there are also accounts indicating that adult victims of sexual abuse fell on deaf ears when they reported their case to ecclesial authorities.<sup>9</sup>

The situation of female victims becomes even more severe if the sexual abuse results in a pregnancy. It goes without saying that such an unwanted pregnancy puts an almost unbearable burden on any woman. However, for women religious, a pregnancy, even if it originated from sexual abuse, also has severe consequences for their ability to live their vocation.<sup>10</sup> They are confronted with a seemingly hopeless situation: if they terminate the pregnancy, they risk excommunication whereas if they do not terminate the pregnancy, they may face exclusion from their community and – depending on their cultural context – they will be doomed to a life as social outcast, whereby there is a realistic chance that they have to enter prostitution to make a living to sustain themselves and their children.<sup>11</sup>

Moreover, women, independent of whether they belong to a religious congregation, are not always free in their decision-making regarding the pregnancy. In addition to the reports presented by Sr. Maura O’Donohue, Sr. Marie McDonald, and Sr. Esther Fangman, several accounts exist of (lay) women, who, after having been impregnated by a priest against their will,

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The Pope, for the first time, calls the sexual abuse of nuns ‘a problem’, in: CNN, 6 February 2019. URL: <https://edition.cnn.com/2019/02/05/world/pope-nuns-abuse/index.html> [last view 01.05.2024]. Also see: MEZZOFIORE, Gianluca; BORGHESE, Livia, Founder and staff of Vatican women’s magazine quit over ‘male control’, in: CNN, 26 March 2019. URL: <https://edition.cnn.com/2019/03/26/europe/vatican-women-magazine-quit-intl/index.html> [last view 01.05.2024].

<sup>7</sup> See: GALLAGHER; BURKE, Pope (see quote: 6). Also see: ARTE, Gottes Dienerinnen (see quote: 3), 0:24-0:31.

<sup>8</sup> Ibid.

<sup>9</sup> See: O’DONOHUE, Concerns (see quote: 5), 5-6. Also see: BBC, India Catholic nun ‘denied justice’ by Vatican, 17 October 2019. URL: <https://www.bbc.com/news/world-asia-india-50079286> [last view: 01.05.2024].

<sup>10</sup> See: O’DONOHUE, Concerns (see quote: 5), p. 4f.

<sup>11</sup> See Ibid. Also see: c. 695 §1 CIC/1983.

are forced by the priest to abort the child.<sup>12</sup> The aborted fetus, that was fathered by Thomas Philippe, was even “*kept as a relic*” and “*all the women ‘initiated’ [by Thomas Philippe] have been asked to venerate the dead child as something sacred*”.<sup>13</sup>

Women, who are pressured into terminating the pregnancy, do not ‘only’ fall victim to sexual abuse but also experience reproductive abuse. The great injustice of this situation becomes even more apparent when realizing that clerical perpetrators do not always have to face adequate – if any – consequences for their action in practice and are more easily able to remain unmolested.<sup>14</sup> The question that cannot be avoided here is how justice can be restored in these cases. While victims can in principle seek recourse to both secular and canon penal law, the focus of this study shall be placed on the latter.

Canon penal law has recently been subject to a lengthy reform process, which started in 2007 and found completion only in December 2021 when the new Book VI (Penal Sanctions in the Church) of the CIC 1983 entered into force.<sup>15</sup> Despite many positive amendments, the new penal law was soon criticized for not exhausting its full potential in the prevention and punishment of abuse.<sup>16</sup> Against this background, the aim of this study is to explore the effectiveness of canon penal law in giving protection to adult women, who were sexually and reproductively abused by priests in the Roman Catholic Church. This analysis requires a methodological framework, which will be described in Chapter two. Afterwards, in Chapter three, an

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<sup>12</sup> See: O'DONOHUE, Concerns (see quote: 5), p. 5. Also see: WEISSENFELS, Karin, Zum Schweigen gebracht und kaltgestellt, in: HASLBECK Barbara et al. (Eds.), Erzählen als Widerstand. Berichte über spirituellen und sexuellen Missbrauch an erwachsenen Frauen in der katholischen Kirche, Münster 2020, pp. 173-183. Also see McDONALD, Problem (see quote: 5).

<sup>13</sup> See: Study Commission mandated by L'Arche Internationale, Control (see quote: 4), p. 107f.

<sup>14</sup> See: O'DONOHUE, Concerns (see quote: 5), p. 4.

<sup>15</sup> See: FRANCIS, Apostolic Constitution Pascite Gregem Dei from 23th May 2021, in: AAS 113,6 (2021), pp. 534-537.

<sup>16</sup> See: HAHN, Judith, Sex Offenses – Offensive Sex. Some Observations on the Recent Reform of Ecclesiastical Penal Law, in: Religions 13,4 (2022), p. 332. Also see: RENKEN, John A., The Delicts of Sexual Abuse in the Revised Book VI, in: Studia canonica 56,1 (2022), pp. 85-115. Also see: OHLY, Cristoph, Barmherzigkeit und Strafe. Leitlinien und Koordinaten des neuen kirchlichen Strafrechts, in: Theologische Revue 118,8 (2022), pp. 259–268. Also see: AUSTIN, Brian T., The Revised Book VI, Part I. Selected Norms and Commentary, in: Jurist 77,2 (2021), pp. 291-334. Also see: HAHN, Judith, Neue Härte gegen Missbrauch? Beobachtungen zur kirchlichen Strafrechtsreform, in: feinschwarz: Theologisches Feuilleton, 16 June 2021. URL: [https://www.feinschwarz.net/neue-haerte-gegen-missbrauch-beobachtungen-zur-kirchlichen-strafrechtsreform/#\\_ftn1](https://www.feinschwarz.net/neue-haerte-gegen-missbrauch-beobachtungen-zur-kirchlichen-strafrechtsreform/#_ftn1) [last view: 01.05.2024]. Also see: NEUMANN, Felix, Die Liebeskirche straft wieder: Neues kirchliches Strafrecht in Kraft, in: katholisch.de, 8 December 2021. URL: <https://www.katholisch.de/artikel/32290-die-liebeskirche-straft-wieder-neues-kirchliches-strafrecht-in-kraft> [last view: 01.05.2024].

attempt will be made to delineate the occurrence of sexual and reproductive abuse of adult women in the Church. Chapter four will then analyze the effectiveness of canon penal law in cases of sexual and reproductive abuse from the perspective of adult female victims. The final Chapter will summarize and discuss the findings.

## 2. Methodology

The aim of this study is to answer the following research question: To what extent does canon penal law protect adult female victims of sexual and reproductive abuse committed by priests in the Roman Catholic Church? To answer this research question, two terms require further operationalization: sexual and reproductive abuse. To operationalize the term 'sexual abuse', the definition of the World Health Organization will be followed, which delineates sexual abuse as an "*[a]ctual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.*"<sup>17</sup> Since the term 'reproductive abuse' is coined by the work of Doris Reisinger, her definition will be employed, according to which reproductive abuse occurs "*when an individual third person claims a right to control another individual's reproductive life directly, in their place, regardless of their will and wellbeing.*"<sup>18</sup>

### 2.1 Limitations

This study is subject to several limitations. First, it will place the emphasis on universal rather than particular law. Second, it will be formally restricted to adult female victims, even though most canonical provisions equally apply to male victims. This distinction will thus be of most relevance for the third chapter in which the extent of the sexual and reproductive abuse of adults will be outlined. While it is already difficult to visualize this extent for adult female victims, it is even more complicated to inventory the sexual abuse of male adults. On the one hand, this has to do with the fact that publicly accessible accounts of men, who experienced

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<sup>17</sup> World Health Organization, Sexual Exploitation and Abuse: Prevent and protect. What you need to know and do, p. 1. URL: <https://www.who.int/docs/default-source/documents/ethics/sexual-exploitation-and-abuse-pamphlet-en.pdf> [last view: 28.04.2024].

<sup>18</sup> REISINGER, Doris, Reproductive Abuse in the Context of Clergy Sexual Abuse in the Catholic Church, in: *Religions* 13,3 (2022), p. 2.

sexual abuse as an adult in the Church, are a rarity. One of the rare examples of such accounts is provided by Wolfgang F. Rothe, who, as a priest, claims to have been sexually abused by a bishop.<sup>19</sup> Due to the limited number of such personal accounts, it is difficult to assess whether they point to individual cases or rather to a more structural occurrence. For the US context, the McGrath Institute for Church Life at the University of Notre Dame together with the Center for Applied Research in the Apostolate started to bring light into this matter when they, in 2019, researched the prevalence of “*sexual harassment, abuse, and misconduct at the Catholic seminaries and houses of formation that form diocesan and religious priests in the United States.*”<sup>20</sup> They found that 11% of all respondents “*have or might have*” experienced “*sexual harassment, abuse, or misconduct.*”<sup>21</sup> While in most cases the sexually transgressive behavior was committed by another seminarian, it also occurred that the transgressor was “*a seminary authority (20%) or a Church authority not directly connected to their seminary (16%).*”<sup>22</sup> Another reason for the focus on female victims lies in the fact that in terms of reproductive abuse, male adults are, as far as we know, much less affected than female adults.<sup>23</sup> Third, due to the limited scope of this study, it is impossible to describe the applicable canonical framework for all categories of perpetrators (such as non-clerical religious and pastoral workers). Since priests often recur as abusers in victim accounts, this study will focus exclusively on the category of priests. Fourth, this study will only focus on the canonical situation of the victim and the perpetrator and will not expound on the potential indirect criminal liability of third parties (e.g. bishops, who after having been informed of the abuse, refrain from taking necessary action).

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<sup>19</sup> See: ROTHE, Wolfgang F., *Missbrauchte Kirche. Eine Abrechnung mit der katholischen Sexualmoral und ihren Verfechtern*, München 2021.

<sup>20</sup> University of Notre Dame (McGrath Institute for Church Life); Center for Applied Research in the Apostolate, *Sexual Harassment and Catholic Seminary Culture: The First Sociological Survey of Seminarians*, 2019, p. 1. URL: [https://news.nd.edu/assets/335261/micr\\_cara\\_report\\_1\\_.pdf](https://news.nd.edu/assets/335261/micr_cara_report_1_.pdf) [last view: 01.05.2024].

<sup>21</sup> *Ibid.*, p. 17.

<sup>22</sup> *Ibid.*, p. 30.

<sup>23</sup> See: In theory, one could think of cases of forced sterilization or castration. On therapeutic castration of Catholic religious and clerics in the Netherlands in the 20<sup>th</sup> century see: VIJSELAAR, Joost et al. (Eds.), *Onderzoek Therapeutische castratie en andere psychiatrische behandelingen van zedendelinquenten 1920–1970*, Den Haag 2015, pp. 179-196. Also see REISINGER, Abuse (see quote: 18), p. 3.

## 2.2 Evaluative Framework for the Effectiveness of Canon Penal Law

To determine the effectiveness of canon penal law to protect adult female victims of sexual and reproductive abuse in the Church, indicators are needed. These indicators can be borrowed from the universally recognized right to protection of one's human rights, the right to a fair trial and the right to an effective remedy that together safeguard access to justice in European and international human rights law.<sup>24</sup> It is noteworthy in this regard that “[t]he right of victims to access justice was not always seen as compatible with ensuring the rights of defendants, and [that] this right has only recently been afforded the same kind of standing as defendants' rights” in European human rights law.<sup>25</sup>

Even though the Holy See is not formally bound by European and international human rights instruments, they can arguably serve as a source of inspiration to improve canon penal law. Furthermore, as an observer with the Council of Europe, the Holy See has agreed “*to accept the principles of (i) democracy; (ii) the rule of law; and (iii) the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms; and (iv) (...) to co-operate with the Council of Europe.*”<sup>26</sup>

Due to the limited scope of this study, it is impossible to discuss the effectiveness of canon penal law in its entirety. Therefore, the choice was made to focus on the initial question of whether sexual and reproductive abuse of adult women is criminalized in canon penal law. In European human rights law, this question is addressed by the right to protection of one's human rights.<sup>27</sup> To measure the right to protection of one's human rights, only one indicator

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<sup>24</sup> See: Articles 6 and 13 ECHR. Also see: article 47 EU Charter on Fundamental Rights. Also see: European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European law relating to access to justice*, Luxembourg 2016, p. 157. Rather than focusing on (the interpretation of) one of the European human rights instruments, use has been made of this particular handbook as it outlines the main conditions for the cited rights based on the case law of the CJEU and the ECtHR and outlines how the protection of these rights under the EU Charter of Fundamental Rights and the ECHR compare to each other.

<sup>25</sup> See: European Union Agency for Fundamental Rights and Council of Europe, *Handbook* (see quote: 24), p. 158.

<sup>26</sup> Council of Europe, *Criteria for the Granting of Observer Status with the Council of Europe*, 1-2 and 7 July 1999.

URL: <https://rm.coe.int/0900001680695176> [last view: 22.05.2024].

<sup>27</sup> See: Articles 1, 3 ECHR.

requires consideration, namely whether competent authorities “*criminalise severe human rights violations*”.<sup>28</sup>

Once it has been determined whether canon penal law safeguards the right to protection of one’s human rights, it would be intriguing to continue with an examination of the extent to which canon penal law respects the right to an effective remedy and the right to fair trial in addition to the support, information, protection, and participation rights enshrined in the EU Victims’ Rights Directive.<sup>29</sup> Since these questions cannot be adequately dealt with on the basis of universal canon law but also require an assessment of particular canon law, these questions will have to be addressed in future research.

### 3. Sexual and reproductive abuse of adult women in the Catholic Church

Before the applicable canonical legal framework can be analyzed, it is important to first shed light on the prevalence of sexual and reproductive abuse of adult women in the Church and to identify the risk factors that facilitate the occurrence of these types of abuse.

#### 3.1 Sexual abuse of women

To understand the sexual abuse of women, we need to consider two important aspects. First, we must realize that the acknowledgment that women can even fall victim to sexual abuse is a relatively young and hard fought for achievement.<sup>30</sup> Second, we likely underestimate how great the risk is for women to be sexually abused. After all, on the authority of data obtained from the World Bank, the 2009 factsheet issued by the United Nations Secretary-General’s Campaign ‘UNiTE to End Violence against Women’ strikingly states that “[w]omen aged 15-44

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<sup>28</sup> European Union Agency for Fundamental Rights and Council of Europe, Handbook (see quote: 20), p. 158.

<sup>29</sup> See: Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (2012) OJ L 315, 14/11/2012, pp. 57–73.

<sup>30</sup> See: LEIMGRUBER, Ute, Frauen als Missbrauchsopfer in der katholischen Kirche? Wie Missbrauch tabuisiert und legitimiert wird, in: REISINGER, Doris, Gefährliche Theologien. Wenn theologische Ansätze Machtmissbrauch legitimieren, Regensburg 2021, pp. 119–136; here p. 121. DE WEGER analyses sexual activity of priests with adults as “professional sexual misconduct” and consequently describes its effects on victims. See: DE WEGER, Stephen E., Unchaste Celibates. Clergy Sexual Misconduct against Adults – Expressions, Definitions, and Harms, in: *Religions* 13,5 (2022), p. 393.

*are more at risk from rape and domestic violence than from cancer, car accidents, war and malaria.*<sup>31</sup> While processing this insight, we cannot but wonder how this shocking fact translates to the context of the Catholic Church. Even though there is a growing attention for the existence of adult victims of sexual abuse in the Church, it is difficult to estimate how many women have had to make this experience as an adult as reliable statistics are difficult to find. To date, studies on sexual abuse of adults in the Church often apply qualitative research methods and thus, rather than producing statistics, pursue different aims, such as the investigation of how women religious dealt with their traumatic experiences.<sup>32</sup> Yet, this gap will be diminished by new research projects that have recently been set up to systematically study the sexual abuse of female adult victims in the context of the Church.<sup>33</sup> Nevertheless, the gap will not completely vanish as it can be observed that within the group of female victims, women religious receive more academic attention than lay women.

While awaiting the results of these studies, recourse had to be sought to more isolated studies on the prevalence of sexual abuse of women in specific (geographic) contexts within the Catholic Church, which of course cannot paint the full picture. They all show that the sexual abuse of women points to a more structural problem and thus cannot be reduced to individual cases.<sup>34</sup>

### 3.1.1 Sexual abuse of women religious

In 2019, the Austrian newspaper *Kurier* published an article about the sexual abuse of women religious in which it announced that *“according to estimates, 30% of all nuns became victims of sexual abuse by religious brothers and priests”* (own translation).<sup>35</sup> Even though the authors

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<sup>31</sup> United Nations Secretary-General’s Campaign ‘Unite To End Violence Against Women’, Violence against Women, November 2009. URL: [http://unis.unvienna.org/pdf/factsheets/UNiTE\\_TheSituation\\_en.pdf](http://unis.unvienna.org/pdf/factsheets/UNiTE_TheSituation_en.pdf) [last view: 01.05.2024].

<sup>32</sup> See: DURÀ-VILÀ, Gloria; LITTLEWOOD, Roland, Integration of sexual trauma in a religious narrative: Transformation, resolution and growth among contemplative nuns, in: *Transcult Psychiatry* 50,1 (2013), pp. 21–46.

<sup>33</sup> For an overview of these projects in Germany, see: Hidden patterns of abuse. Missbrauchsmuster, Projekte. URL: <https://missbrauchsmuster.de/forschen/projekte/> [last view: 05.06.2024].

<sup>34</sup> See: HEYDER; LEIMGRUBER, Missbrauch (see quote: 2), p. 188.

<sup>35</sup> Original passage: *“Laut Schätzungen wurden 30 Prozent aller Nonnen Opfer von sexuellem Missbrauch durch Ordensbrüder und Priester.”* See: MAYER-KILANI, Irene; BOBEK, Susanne, Jede dritte Nonne wurde missbraucht, in: *Kurier*, 6 February 2019. URL: <https://kurier.at/chronik/welt/jede-dritte-nonne-wurde-missbraucht/400399859> [last view: 01.05.2024].

did not reveal the underlying sources, this figure, though distressingly high, is not necessarily unsubstantiated. A survey study on the prevalence of sexual trauma among active religious sisters in the US that was published in 1998 has revealed that almost 30% of all active religious sisters experienced sexual trauma in the course of their religious life.<sup>36</sup> Among the various forms of sexual trauma that were covered by the survey, it was found that 10.4% of all active religious sisters experienced sexual abuse such as “*rape (...) [or] sexual assault*”, which “*could not be classified as child sexual abuse, sexual exploitation, work sexual harassment, or intra-community sexual harassment*” while being a religious sister.<sup>37</sup> However, the study does not indicate in how many cases such abuse was committed by a priest.

It is needless to say that sexual abuse also exists in other parts of the world. Concerning the African church for instance, the report of Sr. Marie McDonald affirmed that “[*s*]exual harassment and even rape of sisters by priests and bishops is allegedly common. Sometimes, when a sister becomes pregnant, the priest insists that she have an abortion. The sister is usually dismissed from her congregation while the priest is often only moved to another parish or sent for studies.”<sup>38</sup>

### 3.1.2 Sexual abuse of lay women<sup>39</sup>

While retrieving statistics on sexual abuse of women religious has proven difficult, it is more challenging to find statistics on lay women because this cohort has enjoyed even less academic interest than women religious. To begin with, the information that was collected from the US population for the 2008 General Social Survey has revealed that “*3.1 percent of all women who attend religious services at least monthly [in the US] reported being the object of a sexual advance by a clergyperson or religious leader in their own congregation since turning 18.*”<sup>40</sup> To correctly interpret this result, two things must be taken into account: first, from the reports

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<sup>36</sup> See: CHIBNALL, John T.; WOLF, Ann; DUCKRO, Paul N., A National Survey of the Sexual Trauma Experiences of Catholic Nuns, in: Review of Religious Research 40,2 (1998), pp. 147-167; p. 158.

<sup>37</sup> See: *Ibid.*, p. 157.

<sup>38</sup> McDONALD, The Problem (see quote: 5).

<sup>39</sup> According to c. 207 CIC/1983, all women form part of the laity. For this thesis, the term ‘laity’ is used in a theological sense to distinguish women, who have not joined a religious community, from women religious.

<sup>40</sup> CHAVES, Mark; GARLAND, Diana, The prevalence of clergy sexual advances towards adults in their congregations, in: Journal for the Scientific Study of Religion 48,4 (2009), pp. 817-824; here p. 817.

of this study, it is unclear how the term 'sexual advance' was operationalized and therefore, to what extent it overlaps with 'sexual abuse' and second, since the study was conducted across the diverse religious landscape of the US, this result does not give any specific information about the occurrence of 'sexual advances' in the US Catholic Church.

More specific data on the sexual abuse of women in the Catholic Church could be retrieved from the Netherlands and Germany. In the Netherlands, the Roman Catholic contact point for transgressive behavior (*R.K. Meldpunt Grensoverschrijdend Gedrag*) that was set up in mid-2015, publishes annual reports about the complaints that they received.<sup>41</sup> Even though these reports do not always explicitly state whether the alleged female victim is a religious or lay person, they reveal that the sexual abuse of women is a reality in the Dutch Church. At the same time, it remains difficult to assess the gravity of this problem. This is because the contact point has only received a relatively small number of cases in total and only few of these cases concern sexually transgressive behavior towards women:

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<sup>41</sup> See: Meldpunt Grensoverschrijdend Gedrag RKK, Meer informatie. URL: <https://meldpuntgrensoverschrijdendgedragrkk.nl/meer-informatie/> [last view: 01.05.2024].

		2015	2016 <sup>42</sup>	2017 <sup>43</sup>	2018 <sup>44</sup>	2019 <sup>45</sup>	2020	2021	2022 <sup>46</sup>
Alleged offender	Priest	-	-	1 <sup>47</sup>	-	1 <sup>48</sup>	-	-	1-2 <sup>49</sup>
	Male Religious	-	1 <sup>50</sup>	-	-	1 <sup>51</sup>	1 <sup>52</sup>	-	-
Total number of complaints that fall within		7 <sup>53</sup>	15 <sup>54</sup>	12 <sup>55</sup>	12 <sup>56</sup>	14 <sup>57</sup>	5 <sup>58</sup>	5 <sup>59</sup>	14 <sup>60</sup>

<sup>42</sup> In two cases, it is unclear whether the alleged offender is a cleric, see: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2017, p. 4. URL: [https://meldpuntgrenoverschrijdendgedragrkk.nl/wp-content/uploads/2018/04/Jaarverslag\\_2017\\_RK\\_Meldpunt\\_Grenoverschrijdend\\_Gedrag.pdf](https://meldpuntgrenoverschrijdendgedragrkk.nl/wp-content/uploads/2018/04/Jaarverslag_2017_RK_Meldpunt_Grenoverschrijdend_Gedrag.pdf) [last view: 03.04.2024]. Also see: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2016, p. 4 (melding 15). URL: [https://meldpuntgrenoverschrijdendgedragrkk.nl/wp-content/uploads/2017/05/2017-03-20\\_Jaarverslag\\_2016\\_R.K.\\_Meldpunt\\_Grenoverschrijdend\\_Gedrag.pdf](https://meldpuntgrenoverschrijdendgedragrkk.nl/wp-content/uploads/2017/05/2017-03-20_Jaarverslag_2016_R.K._Meldpunt_Grenoverschrijdend_Gedrag.pdf) [last view: 03.04.2024].

<sup>43</sup> In two cases, it is unclear whether the alleged offender is a cleric, see: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2017 (see quote: 42), p. 3 (melding 3, 9).

<sup>44</sup> In one case, it is unclear whether the alleged victim was an adult, see: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2018, p. 3 (melding 6). URL: <https://meldpuntgrenoverschrijdendgedragrkk.nl/jaarverslag-2018/> [last view: 03.04.2024].

<sup>45</sup> In two cases, it is unclear whether the alleged victims were adults (a. 5-6). In another case, a cleric has contacted the Reporting Point after his sister accused him of sexual abuse as an adult (a.1). See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2019, p. 2 (a. 1, 5-6). URL: <https://meldpuntgrenoverschrijdendgedragrkk.nl/jaarverslag-2019/> [last view: 03.04.2024].

<sup>46</sup> In one case it is unclear whether the alleged offender was a cleric, see: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2022, p. 4 (B. 2). URL: <https://meldpuntgrenoverschrijdendgedragrkk.nl/jaarverslag-2022/> [last view: 03.04.2024].

<sup>47</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2017 (see quote: 42), p. 3 (melding 8).

<sup>48</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2019 (see quote: 45), p. 2 (a. 3).

<sup>49</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2022 (see quote: 46), p. 4 (B. 6, 9). In case B. 6 it is unclear whether the complaint was submitted by an alleged male or female victim.

<sup>50</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2016 (see quote: 42), p. 4 (melding 9).

<sup>51</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2019 (see quote: 45), p. 2 (a. 2).

<sup>52</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2020, p. 3. URL: <https://meldpuntgrenoverschrijdendgedragrkk.nl/jaarverslag-2020/> [last view: 03.04.2024].

<sup>53</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2015, pp. 4-5. URL: <https://www.meldpuntgrenoverschrijdendgedragrkk.nl/wp-content/uploads/2016/12/2016-12-14-Jaarverslag-R.K.-Meldpunt-Grenoverschrijdend-Gedrag.pdf> [last view: 21.05.2024].

<sup>54</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2016 (see quote: 42), p. 3.

<sup>55</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2017 (see quote: 42), p. 2.

<sup>56</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2018 (see quote: 44), p. 2.

<sup>57</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2019 (see quote: 45), pp. 2-4.

<sup>58</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2021 2-4, URL: [https://rkmeldpunt.nl/wp-content/uploads/2024/06/Jaarverslag\\_2021\\_RK\\_Meldpunt\\_Grenoverschrijdend\\_Gedrag.pdf](https://rkmeldpunt.nl/wp-content/uploads/2024/06/Jaarverslag_2021_RK_Meldpunt_Grenoverschrijdend_Gedrag.pdf) [last view 02.10.2015].

<sup>59</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2021 ...", 2-4.

<sup>60</sup> See: Meldpunt Grenoverschrijdend Gedrag RKK, Jaarverslag 2022 (see quote: 46), p. 3.

Contact Point's competence								
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It is probable that not all adult female victims of sexually transgressive behavior have reported their case to the contact point. However, due to a lack of relevant data, it is impossible to estimate the number of unreported cases.

In Germany it is even the case that a special contact point for adult victims of abuse in the Catholic Church has been set up by the episcopal conference in 2022.<sup>61</sup> Yet, contrary to the Dutch contact point, they do not make their annual report publicly accessible. Therefore, it is unclear how many complaints they receive. Some insight is provided by the German Federation of Pastoral Workers ("Bundesverband der Gemeindereferent\*innen Deutschlands"), which initiated a survey on "*experiences of power abuse in the pastoral service*" in mid-2022.<sup>62</sup> In principle, all German pastoral workers were invited to participate in the survey, but it turned out that not all pastoral workers were informed on time about the possibility of participation.<sup>63</sup> After all, the survey was completed by 936 pastoral workers from different German dioceses.<sup>64</sup> About one of eight respondents (~13%) indicated that they have experienced sexual abuse or harassment as pastoral workers, whereby a distinction was not made between male/female respondents.<sup>65</sup>

<sup>61</sup> The contact point can be reached via: Arbeitsstelle für Frauenseelsorge der Deutschen Bischofskonferenz, Beratung. URL: <https://gegengewalt-inkirche.de/> [last view: 04.04.2024]. Also see: Deutsche Bischofskonferenz, Arbeitsstelle für Frauenseelsorge, Gewalt gegen Frauen in Kirche und Orden. URL: <https://www.frauenseelsorge.de/pr%C3%A4vention.html> [last view: 28.04.2024].

<sup>62</sup> Original title: "*Erfahrungen mit Machtmisbrauch im pastoralen Dienst*". See: NAGEL, Regina; LÜRBKE, Hubertus (Eds.), Machtmisbrauch im pastoralen Dienst: Erfahrungen von Gemeinde- und Pastoralreferent:innen, Freiburg i. Br. 2023, pp. 13, 32, 34.

<sup>63</sup> See: *Ibid.*, p. 32f.

<sup>64</sup> See: *Ibid.*, p. 34.

<sup>65</sup> See: *Ibid.*, p. 53. For the difference between 'sexual harassment' and 'sexual abuse' see: World Health Organization, Sexual Exploitation (see quote: 17).

### 3.2 Reproductive abuse of women

Personal testimonies and reports attest the existence of reproductive abuse of women in the Catholic Church.<sup>66</sup> However, at this point, it is impossible to estimate the spread of this type of abuse. The foregoing has shown how difficult it is to retrieve reliable statistics on the sexual abuse of women in the Church. Finding statistics on the reproductive abuse in the Catholic Church is nearly impossible, since they are almost non-existent.<sup>67</sup> This was to be expected as the academic revision of this type of abuse started only recently. In fact, the first methodical study on this topic was published in 2022 by Doris Reisinger, who affirms that reproductive abuse in the context of the Church is primarily experienced by adult women.<sup>68</sup> However, due to a lack of data, this problem cannot yet be expressed in numbers.<sup>69</sup> Therefore, for her own statistical work, she had to instead focus on minor victims, for which she could use the cases included in the US Bishop Accountability database.<sup>70</sup> Nevertheless, based on her (statistical) work, Reisinger shows that three different categories of reproductive abuse exist that can equally apply to adult victims: "*indifference*", "*coercion*", and intentional "*violence*".<sup>71</sup> The first category, "*indifference*", occurs when perpetrators "*vaginally penetrate their victims while not using a reliable form of birth control [and thereby] (...) risk impregnating them.*"<sup>72</sup> The second category, "*coercion*", is comprised of abortion, constrained adoption, and "*pregnancies and births under adverse conditions*".<sup>73</sup> Last, intentional "*violence*" occurs when "*the reproductive vulnerability of a person [is used] to torture or intimidate them into submission.*"<sup>74</sup>

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<sup>66</sup> See: McDONALD, Problem (see quote: 5). Also see: WEISSENFELS, Schweigen (see quote: 16), pp. 173-183. Also see: Study Commission Mandated by L'Arche Internationale, Control (see quote: 4), p. 108.

<sup>67</sup> See: REISINGER, Abuse (see quote: 18), p. 1.

<sup>68</sup> See: Ibid., p. 2.

<sup>69</sup> See: Ibid.

<sup>70</sup> See: Ibid., pp. 1-4.

<sup>71</sup> See: Ibid., pp. 4-10.

<sup>72</sup> Ibid., p. 4.

<sup>73</sup> Ibid., pp. 5-10.

<sup>74</sup> Ibid., p. 10.

### 3.3 Risk factors for sexual and reproductive abuse in the Catholic Church

It is difficult to provide a conclusive overview of all risk factors for sexual and reproductive abuse and it must be considered that not all these reasons apply to all contexts in which abuse can potentially occur. Therefore, rather than attempting to provide a generic overview, it is deemed more useful to identify important risk factors that facilitate sexual and reproductive abuse of women in the specific context of the Catholic Church. Four risk factors could be identified: (i) lack of sufficient financial means, (ii) power asymmetries, (iii) lack of support, and (iv) the HIV/ AIDS pandemic.<sup>75</sup>

#### 3.3.1 Lack of sufficient financial means

Financial difficulties are known by a lot of religious congregations.<sup>76</sup> Without sufficient financial means, they are unable to take care of the necessities of their members and to support their apostolate.<sup>77</sup> This situation is aggravated by the experience of financial exploitation; frequently, the valuation of the work of religious sisters is not expressed with adequate remuneration.<sup>78</sup> This can lead to situations of (forced) prostitution, in which clerics abuse this financial vulnerability by promising financial support in exchange for sexual services.<sup>79</sup>

#### 3.3.2 Power asymmetries

A clear power asymmetry exists between male clerics and female laity.<sup>80</sup> After all, the cleric *“is [often] theologically better educated, invested with a ‘sacred’ power to be a channel of God’s grace through the sacraments, and is a respected member of the community”*.<sup>81</sup> Espe-

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<sup>75</sup> See: McDONALD, Problem (see quote: 5). Also see HEYDER, LEIMGRUBER, Missbrauch (see quote: 2), p. 188.

<sup>76</sup> See: McDONALD, Problem (see quote: 5).

<sup>77</sup> See: Ibid.

<sup>78</sup> See: Ibid.

<sup>79</sup> See: Ibid.

<sup>80</sup> See: BOUCLIN, Marie E., *Seeking Wholeness. Women Dealing with Abuse of Power in the Catholic Church*, Collegeville; Minnesota 2006, p. 32.

<sup>81</sup> Ibid. Also see: HEYDER; LEIMGRUBER, Missbrauch (see quote: 2), p. 197. Also see: GROSSBÖLTING, Thomas, *Die schuldigen Hirten: Geschichte des sexuellen Missbrauchs in der katholischen Kirche*, Freiburg i. Br. 2022, pp. 177-195. Also see LEIMGRUBER, *Frauen* (see quote: 30), p. 129.

cially when a priest, who enjoyed a sound theological formation, encounters a potential female victim, who may dispose over a more limited degree of theological knowledge, the former can easily employ ‘toxic theology’ to convince his victim about the legitimacy of the abuse.<sup>82</sup> A classic example is that “*abusive priests tell their victims that they know what celibacy is really about*”.<sup>83</sup> Such behavior qualifies as spiritual abuse, which is considered a precursor of sexual abuse in the Church.<sup>84</sup> Likewise, certain (theological) currents in the Church can support the creation of a misogyny image of women that connects womanhood to obedience, seduction, and sin.<sup>85</sup> Such an image of women can be further intensified through cultural stereotypes that may point in the same direction: “[t]he reports allege that some Catholic clergy exploit their financial and spiritual authority to gain sexual favors from religious women, many of whom, in developing countries, are culturally conditioned to be subservient to men.”<sup>86</sup>

### 3.3.3 Lack of support

Clerical perpetrators can benefit from the lack of support granted to victims in two ways. First, in the absence of other forms of support, there are numerous situations in which especially women religious become dependent on clerical support. For instance, women regularly need references from priests to enter religious life or to study at a pontifical university.<sup>87</sup> Knowing that they are often dependent on a priestly endorsement to pursue their study or vocation,

<sup>82</sup> See: McDONALD, Problem (see quote: 5). Also see: BOUCLIN, Wholeness (see quote: 80), pp. 22, 32. Also see: HEYDER, LEIMGRUBER, Missbrauch (see quote: 2), p. 197. The term ‘toxic theology’, though it might appear as a *contradictio in termini*, is increasingly used as an expression in (spiritual) abuse literature to designate abusive interpretations of theology. See for instance: DANIEL, Terri, Toxic Theology as a Contributing Factor in Complicated Mourning, in: Journal of Pastoral Care and Counseling, 73,4 (2019), pp. 196-204. Also see DOWNIE, Alison, Christian Shame and Religious Trauma, in: *Religions*, 13,10 (2022), p. 2. Also see ARTERBURN, Stephen F.; FELTON, Jack, Toxic Faith. Experiencing Healing over Painful Spiritual Abuse, Colorado Springs 2001, p. 288.

<sup>83</sup> BOUCLIN, Wholeness (see quote: 80), p. 34. Also see: DE LASSUS, Dysmas, Verheissung und Verrat. Geistlicher Missbrauch in Orden und Gemeinschaften der katholischen Kirche, Münster 2022, p. 249.

<sup>84</sup> See: SCHÖNKNECHT, Peter, ‘Geistlicher Missbrauch’. Eine medizinisch-psychiatrische Perspektive zu einem nur scheinbar jungen Phänomen, in: HÖRTING, Gerhard (Ed.), Grauzonen in Kirche und Gesellschaft. Geistiger Missbrauch, Wien 2021 (= Symposium 16), p. 42f. Also see: SAMONIGG, Hellmut, Sobald ein Machtgefälle entsteht, besteht das Risiko, dass Macht missbraucht wird, in: HÖRTLING, Gerhard (Ed.), Grauzonen in Kirche und Gesellschaft. Geistiger Missbrauch, Wien 2021 (= Symposium 16), p. 9.

<sup>85</sup> See: BOUCLIN, Wholeness (see quote: 80), pp. 45-49. Also see: LEIMGRUBER, Missbrauchs betroffenen (see quote: 30), p. 120. Also see DE LASSUS, Verheissung (see quote: 83), p. 250.

<sup>86</sup> O'DONOHUE, Concerns (see quote: 5), p. 3. Also see: ALLEN; SCHAEFFER, Reports (see quote: 5). Also see: BOUCLIN, Wholeness (see quote: 80), p. 33. Also see: HEYDER; LEIMGRUBER, Missbrauch (see quote: 2), p. 230. Also see: LEIMGRUBER, Frauen (see quote: 30), p. 123.

<sup>87</sup> See: O'DONOHUE, Concerns (see quote: 5), p. 4.

some clerics have exploited this vulnerable situation by making the issuance of an endorsement conditional upon the provision of sexual benefits.<sup>88</sup> Furthermore, if women religious are sent to work or study in a foreign country, they can usually count on less support than offered to seminarians or clerics for whom housing is more frequently provided.<sup>89</sup> Moreover, they might struggle to fulfil academic expectations, for example if they *“lack the basic education necessary to undertake further studies, or they may have an insufficient knowledge of the language in which they are required to study.”*<sup>90</sup> This lack of support creates vulnerability that can become fertile ground for abuse.<sup>91</sup>

Second, the existence of sexual and reproductive abuse of women in the Church has been an open secret, which was only brought to the attention of the wider public in recent years.<sup>92</sup> It is only now that public awareness for this problem has been created that more initiatives are developed to better support victims and prevent new cases of sexual and reproductive abuse. However, it must be realized that public knowledge in and by itself is insufficient if the abuse is still met with tolerance.<sup>93</sup>

### 3.3.4 The HIV/ AIDS pandemic

In her function as the AIDS Coordinator for the Catholic Fund for Overseas Development, Maura O'Donohue, a religious sister of the Medical Missionaries of Mary, was informed of the sexual exploitation of women religious *“in some 23 countries in five continents, viz. Botswana, Burundi, Brazil, Colombia, Ghana, India, Ireland, Italy, Kenya, Lesotho, Malawi, Nigeria, Papua New Guinea, Philippines, South Africa, Sierra Leone, Uganda, Tanzania, Tonga, United States*

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<sup>88</sup> See: Ibid.

<sup>89</sup> See: McDONALD, Problem (see quote: 5).

<sup>90</sup> Ibid.

<sup>91</sup> See: Ibid.

<sup>92</sup> See: Ibid.

<sup>93</sup> See: KEULEMANS, Philippe, Rapport onthult decennialang misbruik van Indiase zusters, in: kerknet, 3 January 2019. URL: <https://www.erknet.be/erknet-redactie/nieuws/rapport-onthult-decennialang-misbruik-van-indiase-zusters>[last view: 01.05.2024]. The original report could not be retrieved.

*of America, Zambia, Zaire, Zimbabwe.*<sup>94</sup> She emphasized that these incidents are not just based on unsubstantiated information but are repeatedly officially recorded.<sup>95</sup>

In her report, she identifies the growing HIV/ AIDS pandemic as a root cause for the increased risk of women religious to be exposed to sexual abuse from men including priests.<sup>96</sup> After all, with the rise of this pandemic, priests quickly realized that they are less likely to contract HIV/ AIDS if they have sexual intercourse with women religious, who have vowed to live a celibate life, than with non-religious women or if they were to take advantage of the services of prostitutes.<sup>97</sup>

#### 4. The Effectiveness of Canonical Penal Law in Cases of Sexual and Reproductive Abuse from the Perspective of Adult Female Victims

The purpose of this chapter is to determine to what extent canon penal law safeguards the victims' right to protection of their human rights in cases of sexual and reproductive abuse. This right requires competent authorities to "*criminalise severe human rights violations*" to ensure that such violations can be legally prosecuted.<sup>98</sup> Therefore, in the following, it shall be described whether the sexual and reproductive abuse of adults is criminalized in canon penal law.

##### 4.1 The criminalization of sexual abuse

The "*offence against the sixth commandment of the Decalogue*" is penalized as a crime "*against special obligations*"<sup>99</sup> (canon 1395 §3) and as a crime "*against human life, dignity and liberty*"<sup>100</sup> (canon 1398 §1). Which provision applies in a given case, depends on the type of victim that seeks justice. Canon 1395 §3 can be relied upon by all types of victims: "A cleric

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<sup>94</sup> O'DONOHUE, Concerns (see quote: 5), p. 4.

<sup>95</sup> See: Ibid.

<sup>96</sup> See: Ibid.

<sup>97</sup> See: Ibid.; Also see: McDONALD, Problem (see quote: 5).

<sup>98</sup> See: European Union Agency for Fundamental Rights and Council of Europe, Handbook (see quote: 24), p. 158.

<sup>99</sup> Book VI, Title V CIC/83.

<sup>100</sup> Book VI, Title VI CIC/83.

*who by force, threats or abuse of his authority commits an offence against the sixth commandment of the Decalogue or forces someone to perform or submit to sexual acts is to be punished with the same penalty as in § 2.*" By contrast, canon 1398 §1 has a narrower scope since sexual abuse can only be persecuted as a crime "*against human life, dignity and liberty*" if the victim is a minor (canon 97 §1) or qualifies as "*a person who habitually has an imperfect use of reason or with one to whom the law recognises equal protection*".<sup>101</sup> Thus, adult victims must fall in either of these two categories to invoke canon 1398 §1. The scope of the first category (adults with a habitual "*imperfect use of reason*") is relatively clear. It concerns for instance adults "*with dementia or learning disabilities, or those suffering from mental ill-health or substance misuse*".<sup>102</sup> The scope of the second category (adults "*to whom the law recognises equal protection*") is more ambiguous. This is due to two main reasons: first, the terminology used in canon 1398 deviates from the terminology used in *Vos estis lux mundi*, which instead refers to "*a vulnerable adult*".<sup>103</sup> This category includes "*any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence*".<sup>104</sup> According to Renken, this second category of victims enumerated in canon 1398 "*refers indirectly to the 'vulnerable adult,' a category of persons that may be considered imprecise or subject to multiple interpretations*".<sup>105</sup> In canon law literature, this reference appears to be even more direct, as the term "*vulnerable adult*" is frequently used as a catchy term to refer to adults "*to whom the law recognises equal protection*", even though the linguistic discrepancy between canon 1398 and *Vos estis lux mundi* cannot be repudiated.<sup>106</sup> However, given that canon 18 requires a "*strict*

<sup>101</sup> c. 1398 §1 (1) CIC/83.

<sup>102</sup> COSTIGANE, Helen, *Vos estis lux mundi. Too Far or Not Far Enough?*, in: Ecclesiastical Law Journal 22,3 (2020), pp. 300-313. Also see: Dicastery for the Doctrine of the Faith, *Chiaramento sugli adulti vulnerabili* from 30 January 2024. URL: [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_ddf\\_doc\\_20240130\\_chiaramento-adulti-vulnerabili\\_it.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_ddf_doc_20240130_chiaramento-adulti-vulnerabili_it.html) [last view: 04.09.2025].

<sup>103</sup> FRANCIS, Apostolic letter *Vos estis lux mundi* from 25 March 2023, art. 1 §1 sub a. URL: <https://www.vatican.va/content/francesco/en/motu proprio/documents/20230325-motu-proprio-vos-estis-lux-mundi-aggiornato.html> [last view: 26.05.2024]. Also see ORPHANOUPOULOS, Carolina M., *Vulnerability, Ecclesial Abuse, and 'Vulnerable Adults'*, in: Journal of moral theology 3, CTEWC Book Series 3 (2023), pp. 26-39; here p. 27-28. URL: [https://www.researchgate.net/publication/373196560\\_Chapter\\_2\\_Vulnerability\\_Ecclesial\\_Abuse\\_and\\_Vulnerable\\_Adults](https://www.researchgate.net/publication/373196560_Chapter_2_Vulnerability_Ecclesial_Abuse_and_Vulnerable_Adults) [last view: 26.05.2024].

<sup>104</sup> FRANCIS, *Vos estis lux mundi* (see quote: 103), art. 1 §2 sub b.

<sup>105</sup> RENKEN, *Delicts* (see quote: 16), pp. 98, 112.

<sup>106</sup> See for instance: KIEŁPIŃSKI, Krzysztof M., *The Crime of Sexual Exploitation of 'Vulnerable Persons' Under the Current Provisions of Canon Law*, in: *Colloquia Theologica Ottoniana* 39 (2023), pp. 49-76; here p. 59. Also see DALY, Brendan, *Canon law in 2021 on sexual abuse*, in: *Australasian Catholic Record* 98,4 (2021), pp. 449-473;

*interpretation*" of penal norms, it must be concluded that the definition given in *Vos estis lux mundi* cannot be relied upon for the interpretation of canon 1398. Second, canon 99 stipulates that an adult who "habitually lacks the use of reason (...) is equated with infants."<sup>107</sup> It is uncertain whether this equalization with minors is also meant to apply to the second category. An affirmative approach would lead to a limitation of the type of victims that would fall in this category. According to Condon, "*U.S. bishops were told in 2021 that (...) people like seminarians, spiritual directees and Church employees, had been granted equal protection by the law as a separate category.*"<sup>108</sup>

The important question that remains is whether sexual abuse qualifies as an "*offence against the sixth commandment of the Decalogue*". It is common ground that this formulation has been criticized for its vague wording.<sup>109</sup> Because of this ambiguity, it is still debatable which exact offenses are punishable on the basis of this provision.<sup>110</sup> According to the interpretations of canon 1395 §3 of Provost, Lüdicke, Hahn, and Bauer and the commentary authored by Beal, Coriden, and Green, it refers not only to "*adultery or sexual delicts involving clerics and married women*" but also to "*other types of sexual misconduct (...), e.g., rape, fornication,*

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here p. 458. GRAULICH is critical about the use of the term "*vulnerable adult*" because it is "*is not precisely clarified and where, for example, it would be difficult to determine people who are in a certain relationship of dependency in the ecclesial context, which also needs to be legally protected, because they would only be vulnerable from the ecclesial perspective.*" (own translation). Original passage: "*nicht genau genug geklärt ist und wo es z.B. schwierig wäre, Personen, die im kirchlichen Kontext in einem gewissen Abhängigkeitsverhältnis stehen, das auch rechtlich geschützt werden muss, zu erfassen, denn sie wären nur in einer kirchlichen Perspektive vulnerable.*" See: GRAULICH, Markus; HALLERMANN, Heribert, Das neue kirchliche Strafrecht: Einführung und Kommentar, Münster 2021, p. 214.

<sup>107</sup> FRANCIS, *Vos estis lux mundi* (see quote: 103), art. 1 §2 sub a.

<sup>108</sup> CONDON, Edward, Can anyone at the Vatican agree on who's a 'vulnerable adult'?, in: *The Pillar*. URL: <https://www.pillarcatholic.com/p/can-anyone-at-the-vatican-agree-on> [last view: 26.05.2024].

<sup>109</sup> See: GREEN, Thomas J. (Ed.), *Commentary on cc. 1392-1396, New Commentary on the Code of Canon Law*, p. 1599. Also see: LÜDICKE, Klaus, *Commentary on c. 1395*, in: MKCIC, Rn. 2. *Commentary on* Also see: Mattia, Giuseppe di, *Commentary on c. 1395*, in: *Commentario Exegético al Código de Derecho Canónico*, Bd. 4,1 cc. 1254-1500, p. 581. Also see PROVOST, James H., *Offenses against the Sixth Commandment. Toward a Canonical Analysis of Canon 1395*, in: *Jurist* 55,2 (1995), pp. 632-663. Also see: HAHN, Offenses (see quote: 16), p. 4f.. Also see: LING, Michael, *Rettungsversuche. Zum Einfluss des weltlichen auf das kirchliche Strafrecht durch die Anwendung der Leitlinien der Deutschen Bischofskonferenz zum Umgang mit sexuellem Missbrauch*, in: PULTE, Matthias (Ed.), *Tendenzen der kirchlichen Strafrechtsentwicklung*, Paderborn 2017, pp. 167-184; here p. 154. Also see: BAUER, Manfred, *Die delicta graviora und ihre Behandlung durch das Dikasterium für die Glaubenslehre*, in: *Archiv für katholisches Kirchenrecht*, 189,1 (2022), pp. 44-58; here p. 49.

<sup>110</sup> See: PROVOST, Offenses (see quote: 109), pp. 645, 657, 660. Also see: TUOHEY, John, *The Correct Interpretation of Canon 1395: The Use of the Sixth Commandment in the Moral Tradition from Trent to the Present Day*, in: *Jurist* 55,2 (1995), pp. 592-631; here p. 631.

*or incest*".<sup>111</sup> Yet, based on historical research, Tuohey questions this broad interpretation when he points out that "*the CCC states that the tradition has understood the sixth commandment as encompassing the whole of human sexuality, [whereas] there is little historical evidence that this is the case.*"<sup>112</sup> At the same time, it is the prevailing broad interpretation that is applied in legal practice so that it can be safely assumed that sexual abuse falls within the ambit of canon 1395 §3.<sup>113</sup> This interpretation would also be more in line with how the same formulation is interpreted in the context of canon 1398, where the interpretation of this formulation is less vague since the Dicastery for the Doctrine of the Faith has explicitly confirmed that an "*offence against the sixth commandment of the Decalogue [comprises] sexual relations (consensual or non-consensual), physical contact for sexual gratification, exhibitionism, masturbation, the production of pornography, inducement to prostitution, conversations and/or propositions of a sexual nature*".<sup>114</sup> Given the shared objective of canons 1395 §3 and 1398, it would not be plausible to interpret this phrase in the context of canon 1395 §3 in a way that differs from how the phrase is interpreted in canon 1398.

#### 4.2 The criminalization of reproductive abuse

As explained above, Reisinger distinguishes three types of reproductive abuse: "*indifference*", "*coercion*", and intentional "*violence*".<sup>115</sup> Hereafter, it shall be determined whether canon penal law criminalizes the different types of reproductive abuse.

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<sup>111</sup> GREEN, Thomas J. (Ed.), *Commentary on cc. 1392-1396, New Commentary on the Code of Canon Law*, p. 1599. Also see: LÜDICKE, Klaus, *Commentary on c. 1395*, in: MKCIC, Rn. 2-4. Also see HAHN, Offenses (see quote: 16), p. 4f. Also see: PROVOST, Offenses (see quote 109), p. 660. Also see BAUER, *delicta graviora* (see quote: 109), p. 49.

<sup>112</sup> TUOHEY, *Interpretation 1395* (see quote: 110), p. 629.

<sup>113</sup> See: AROKIAJARAJ, Msgr. Michael X. L., 1. *Tribunal of the Roman Rota – Definitive Sentence coram Arokiaraj – Poenalis [Persistent Sin against the Sixth Commandment, or with Force or Threats] – March 17, 2021*, in: *The Jurist* 78,1 (2022), pp. 275-326; here para. 8..

<sup>114</sup> Dicastery for the Doctrine of the Faith, *Vademecum on certain points of procedure in treating cases of sexual abuse of minors committed by clerics from 5 June 2022*, in: *AAS* 114,7 (2022), I., 2. Also see: HAHN, Offenses (see quote: 16), p. 4. Note that in AROKIAJARAJ, *Tribunal* (see quote 113), the *Vademecum's* definition was employed to interpret the phrase "*sin against the sixth commandment of the Decalogue*" in the context of canon 1395 §3 (see para. 8 of the judgement).

<sup>115</sup> REISINGER, *Abuse* (see quote: 18), pp. 4-10.

4.2.1 “Indifference”<sup>116</sup>

This form of reproductive abuse occurs when priests “*vaginally penetrate their victims while not using a reliable form of birth control [and thereby] (...) risk impregnating them*”.<sup>117</sup> It goes without saying that the non-use of birth control by itself is not penalized by canon law. After all, since the Church’s teachings do not permit the use of birth control, it would be a contradiction in terms if she would punish a priest for not using it.<sup>118</sup> Therefore, if a priest does not use birth control while sexually abusing a woman, he can be held accountable for the sexual abuse but not for the additional reproductive abuse in the form of “*indifference*”.<sup>119</sup> In cases of consensual sexual relations, in which women do not make their consent conditional upon the use of birth control, punishment for reproductive abuse is also impossible. Instead, the perpetrator could be punished for the sexual contact but only in cases of concubinage, or if the priest “*continues in some other external sin against the sixth commandment of the Decalogue which causes scandal* [, or if the sexual contact] was committed in public”.<sup>120</sup> However, as will be explored in the following, if women made the condition of using birth control explicit and if it can be established that the non-use of birth control transforms a consensual sexual contact into a non-consensual sexual contact, it might be possible to punish this type of reproductive abuse as sexual misconduct under canon 1395 §3 and canon 1398 §1 (1).

As stated above, canon 1395 §3 penalizes “[a] cleric who by force, threats or abuse of his authority commits an offence against the sixth commandment of the Decalogue”. If we depart from the broader interpretation of canon 1395 §3, which also includes fornication, we can conclude that the requirement of “*an offence against the sixth commandment of the Decalogue*” is met when a priest has consensual sexual contact with an adult woman.<sup>121</sup> However, the committing of this offense by itself would be insufficient as the wording of this provision clarifies that both categories are only punishable if the priest commits them “*by force, threats*

<sup>116</sup> REISINGER, Abuse (see quote: 18), p. 4.

<sup>117</sup> Ibid.

<sup>118</sup> See: PAUL VI, Encyclical Letter Humanae Vitae from 25 July 1968, in: AAS 9 (1968), p. 14.

<sup>119</sup> See: REISINGER, Abuse (see quote: 18), p. 4.

<sup>120</sup> c. 1395 §1-2 CIC/83.

<sup>121</sup> See: GREEN, Thomas J. (Ed.), Commentary on cc. 1392-1396, New Commentary on the Code of Canon Law, p. 1599. Also see: LÜDICKE, Klaus, Commentary on c. 1395, in: MKCIC, Rn. 2-4.. Also see: HAHN, Offenses (see quote: 16), p. 4f. Also see PROVOST, Offenses (see quote: 109), p. 660.

*or abuse of his authority*". Does a situation in which a woman consents to having sexual contact with a priest under the explicit condition that he uses birth control fulfil this additional condition if the priest intentionally refrains from using birth control when he vaginally penetrates her? After all, through the intentional violation of the explicit boundaries set by the woman, the sexual contact will become non-consensual.<sup>122</sup> Therefore, rather than punishing the priest for reproductive abuse, it deserves consideration whether it would be possible to punish him for the sexual contact itself. If the sexual contact occurred in the context of a pastoral relationship, a punishment is feasible as the situation would qualify as an "*abuse of his authority*".<sup>123</sup> Yet, it deserves highlighting that besides the obvious cases in which for instance the priest is the woman's spiritual guide or confessor, it can be challenging to unequivocally establish the existence of a pastoral relationship. Therefore, it needs to be asserted whether the priest's abusive behavior can be criminalized if a pastoral relationship cannot be definitely established or if it is clear that it does not exist. In those cases, punishment is possible on the grounds of "*force*".<sup>124</sup> After all, in Coram Arokiaraj of 17 March 2021, it was held that "*force*" is present when a priest "*imposes pictures of his sexual organs on a non-consenting person*".<sup>125</sup> To this end, it was clarified that "*force*" in the context of canon 1395 §3 "*clearly cannot be limited to the deployment of physical energy on the body of the one enduring it, but also includes any method by which the freedom of that same victim is suppressed and who is therefore forced to suffer the unwilled intrusion into his or her intimate personal sphere*".<sup>126</sup> Given this broad interpretation of "*force*" in canon 1395 §3, it seems likely that the intentional violation of the woman's explicit boundaries regarding the use of birth control, can be punished under this category.

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<sup>122</sup> See: McCARTHY, Richard W., Sexual Virtue: An Approach to Contemporary Christian Ethics, Albany 2015, pp. 214-216. Also see: LEVAND, Mark A.; Ross, Karen, Sexuality education as a moral good. Catholic support for accurate, holistic sexuality information, in: Theology & Sexuality, 27,2-3 (2021), p. 169-187; pp. 181. On the difficulty of assessing whether consent is given to sexual relations, see: HÄNEL, Hilkje C., Sex und Moral – passt das zusammen?, Heidelberg 2021, pp. 66-73.

<sup>123</sup> c. 1395 §3 CIC/83. Also see: LEIMGRUBER, Ute, Vulnerance in Pastoral Care, in: Religions, 13,3 (2022), p. 14. Also see: DALY, Brendan, Sexual Abuse and Canon Law, in: Compass (Kensington, N.S.W.) 43,3 (2009-10), pp. 33-40; here p. 40.

<sup>124</sup> See: c. 1395 §3 CIC/83. Also see: AROKIAJ, Tribunal (see quote: 113), para. 9.

<sup>125</sup> AROKIAJ, Tribunal (see quote: 113), para. 9, 16.

<sup>126</sup> Ibid.

In this context, another question worth considering is the following: if it is considered that “*force, threats or abuse of (...) authority*” all undermine “*the free will of adults, compelling them into non-consensual sex*”, could one argue that conversely all non-consensual sexual relations that undermine the free will are punishable on the basis of canon 1395 §3?<sup>127</sup> Acknowledging that sexual abuse is not exclusively the result of “*force, threats or abuse of (...) authority*” but can also occur if the victim is “*manipulated (...) or tricked into touch or sexual contact*”, Provost poses the question whether the scope of canon 1395 §3 is broad enough to also allow the persecution of abuse in these latter cases.<sup>128</sup> If this holds true, it would be possible to persecute priests, who trick women, with whom he does not have a pastoral relationship, into having sexual contacts with him by pretending to use birth control. In the absence of an authentic interpretation of canon 1395 §3, a final answer cannot be given.<sup>129</sup> However, while canon 17 permits to take “*the purpose and circumstances of the law and (...) the mind of the legislator*” into account when interpreting canon law, canon 18 explicitly requires a “*strict interpretation*” when interpreting canon penal norms. Against this background, it seems unlikely that the scope of canon 1395 §3 can be broadly interpreted to encompass abuse cases that do not result from “*force, threats or abuse of (...) authority*”. In that case, the priest’s sexual misconduct can only be punished with certainty if the sexual contact was performed in public and canon 1395 §2 can be applied. As a last resort, it needs to be assessed whether the open norm of canon 1399 can be applied to punish the priest’s behavior. The application of this canon requires both a “*special gravity of the violation’ and the ‘urgent need to prevent or repair scandals.*”<sup>130</sup> The combination of these constitutive requirements suggests that the application of this canon should be reserved to exceptional cases, which would speak against its use as an unlimited legal ground for punishing sexual abuse cases of adult victims that cannot be brought under the scope of canons 1395 §2 and 1398 §1.<sup>131</sup> Marzona, Miras, and

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<sup>127</sup> See: HAHN, Offenses (see quote: 16), p. 6.

<sup>128</sup> See: c. 1395 §3 CIC/83. Also see: PROVOST, Offenses (see quote: 109), p. 662. Also see: GREEN, Thomas J. (Ed.), Commentary on cc. 1392-1396, New Commentary on the Code of Canon Law, p. 1599.

<sup>129</sup> See: PROVOST, Offenses (see quote: 109), p. 660.

<sup>130</sup> GREEN, Thomas J. (Ed.), Commentary on c. 1399, New Commentary on the Code of Canon Law, p. 1604. Also see: SANCHIS, Rosemaría, Commentary on c. 1399, in: Exegetical Commentary on the Code of Canon Law, Bd. IV,1, p. 560f. Also see: ARIAS, Juan, Commentary on: c. 1399, in: Codice di Diritto Canonico e Leggi Complementari Commentato, p. 946.

<sup>131</sup> See: AZENAR, Frederico, Commentary on: c. 1398, in: Code de Droit Canonique Annoté, p. 784.

Rodríguez-Ocaña even argue “*that the actual scope and practical operability of the juridical instrument provided in this canon is very limited, almost nonexistent.*”<sup>132</sup>

In case of an adult female victim that falls under the definition of “*a person who habitually has an imperfect use of reason or with one to whom the law recognises equal protection*”, recourse can be sought to canon 1398 §1 (1), which also penalizes “*offence against the sixth commandment of the Decalogue*” but unlike canon 1395 §1 does not require the priest to exercise “*force, threats or abuse of his authority*”.<sup>133</sup> The *Vademecum* published by the Dicastery for the Doctrine of the Faith in 2022 explicitly confirms that this offense includes “*sexual relations (consensual or non-consensual)*”.<sup>134</sup> Therefore, independent of the question of whether the female adult consented to the sexual contact in the absence of birth control, it is possible to punish the priest on the basis of this provision.

#### 4.2.2 “Coercion”<sup>135</sup>

This category includes forced abortion, constrained adoption, and “*pregnancies and births under adverse conditions*”.<sup>136</sup> Out of these three sub-categories, the punishment of forced abortion is the most unambiguous: if priests force women to incur an abortion, they can be punished as an accomplice under canon 1397 §2 in conjunction with canon 1329 §2. By contrast, the criminalization of cases that fall in the other two sub-categories is more challenging. To begin with, canon 1399 cannot be invoked. As stated in chapter 4.1.2.1, the application of canon 1399 necessitates a “*special gravity of the violation’ and the ‘urgent need to prevent or repair scandals*”, which entails that it can only be invoked in very exceptional cases.<sup>137</sup> Luckily, this does not necessarily mean that all legal remedies have been exhausted as it might be possible to penalize the coercive behavior of the perpetrator that lies at the root of all three

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<sup>132</sup> SANCHIS, Rosemaría, Commentary for c. 1399, in: Exegetical Commentary on the Code of Canon Law, Bd. IV,1, p. 561.

<sup>133</sup> c. 1398 §1 (1) CIC/83.

<sup>134</sup> *Vademecum*, I., 2. Also see: HAHN, Offenses (see quote: 16), p. 4.

<sup>135</sup> REISINGER, Abuse (see quote: 18), pp. 5-10.

<sup>136</sup> Ibid.

<sup>137</sup> See: GREEN, Thomas J. (Ed.), Commentary on c. 1399, New Commentary on the Code of Canon Law, p. 1604. Also see: SANCHIS, Rosemaría, Commentary for c. 1399, in: Exegetical Commentary on the Code of Canon Law, Bd. IV,1, p. 560f. Also see: ARIAS, Juan, Commentary on: c. 1398, in: Codice di Diritto Canonico e Leggi Complementari Commentato, p. 946

manifestations of this type of reproductive abuse. To discuss this legal detour, it might prove helpful to distinguish physical from non-physical forms of coercive behavior.

In terms of physical abusive behavior, one could think of a priest, who causes bodily harm to the woman, who just gave birth to his child, until she agrees to give the child away for adoption. Depending on the seriousness of the injury that may result from the physical abuse, it is possible to impose a penalty for bodily harm based on canon 1397 §1. This provision requires that the woman is “*gravely wound[ed]*”. Yet, the CIC 1983 does not specify when this requirement is fulfilled.<sup>138</sup> Therefore, it seems to fall within the discretionary power of the judge to determine whether the injury is sufficiently serious to warrant the application canon 1397.<sup>139</sup> Regrettably, also the commentaries only scarcely provide criteria to establish the gravity of the injury.<sup>140</sup> One such attempt could be found in the commentary of Pighin, who argues for “*a physical injury produced to the body of a human being to his or her detriment, in a traumatic form, such as to expose the physical life of the injured person to adverse conditions and even to the risk of death*”.<sup>141</sup> Even though the priest could not be directly punished for reproductive abuse, he could be persecuted for serious bodily harm on the basis of canon 1397 §1.

Another example of physical abuse that one could think of concerns the situation in which a priest fathers a child with a novice, who then wants to leave the community. Out of fear of scandal, the priest pays the novice’s religious superior to hinder the pregnant novice from leaving her cell in the convent by locking her in and to force her to give birth in her cell without the assistance of any qualified medical support. In this case, even if the priest could not be

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<sup>138</sup> See: PÉREZ-MADRID, Francisca, Commentary on c. 1397, in: *Commentario Exegético al Código de Derecho Canónico*, Bd. 4,1 cc. 1254-1500, p. 587. Also see: PIGHIN, Bruno F., *Il Nuovo Sistema Penale Della Chiesa*, Venice 2021, p. 489. Also see: GRAULICH; HALLERMANN, *Strafrecht* (see quote: 106), p. 212.

<sup>139</sup> See: PÉREZ-MADRID, Francisca, Commentary on c. 1397, in: *Commentario Exegético al Código de Derecho Canónico*, Bd. 4,1 cc. 1254-1500, p. 587f..

<sup>140</sup> See: WOESTMAN, William H., *Ecclesiastical Sanctions and the Penal Process. A Commentary on the Code of Canon Law*, Ottawa 2003, p. 151. Also see GREEN, Thomas J. (Ed.), *Commentary on cc. 1397-1398, New Commentary on the Code of Canon Law*, p. 1602. Also see: GREEN, Thomas J., *Commentary on: 1397*, in: *The Code of Canon Law. A Text and Commentary*, p. 930. Also see: AZENAR, Frederico, *Commentary on: c. 1397*, in: *Code de Droit Canonique Annoté*, p. 782. Also see: LÜDICKE, Klaus, *Commentary for c. 1397,2*, in: MKCIC. Also see: PÉREZ-MADRID, Francisca, *Commentary on c. 1397*, in: *Commentario Exegético al Código de Derecho Canónico*, Bd. 4,1 cc. 1254-1500, p. 587f. Also see: ARIAS, Juan, *Commentary on: c. 1397*, in: *Codice di Diritto Canonico e Leggi Complementari Commentato*, p. 943. Also see: PIGHIN, *Sistema Penale* (see quote: 138), p. 489.

<sup>141</sup> Original passage translated with DeepL: “*una lesione fisica prodotta all’organismo di un essere umano a suo danno, in forma traumatica, tale da esporre la vita fisica del ferito a sofferti condizionamenti negativi e persino a rischio di morte*”. See: PIGHIN, *Sistema Penale* (see quote: 138), p. 489.

directly punished for reproductive abuse, he could be punished as an accomplice for the forced imprisonment under canon 1397 §1 in conjunction with canon 1329 §2. Equally, punishments for physical coercive behavior are possible if the priest “*by force or by fraud abducts, imprisons, [or] mutilates*” his victim to facilitate reproductive abuse.<sup>142</sup>

In addition to physical forms of coercion, priests can also employ non-physical abusive strategies to force their victims to abort or give away their children for adoption or to give birth in detrimental circumstances. Perhaps the most prominent strategy that is slowly receiving more attention in the Church is spiritual abuse. If women are spiritually abused by a priest, for instance during confession or spiritual direction, and that priest manipulates theology to persuade the woman that the abortion or adoption is willed by God, it might be possible to rely on canon 1378 §1, according to which “[a] person who, apart from the cases already foreseen by the law, abuses ecclesiastical power, office, or function, is to be punished”.<sup>143</sup> Given the rather broad wording of this canon, it seems that also other non-physical forms of coercive behavior, and perhaps even physical forms of coercive behavior that are not sufficiently serious to fall within the scope of canon 1397 could be punished on the basis of this canon if it can be established that the priest “*abuse[d] ecclesiastical power, office, or function*”, for instance when these forms of coercive behavior occurred in a pastoral relationship.

For the interpretation of this canon, use shall be made of the commentaries available for its predecessor (i.e. canon 1389 CIC 1983 (old)), since commentaries that discuss the new penal law are still relatively rare and they usually only briefly address this canon. When using the old commentaries, due regard is given to the fact that not only the numbering but also the formulation of this canon has slightly changed, which might impact its interpretation in light of canon 18.<sup>144</sup>

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<sup>142</sup> See: c. 1397 §1 CIC/83.

<sup>143</sup> Sekretariat der Deutschen Bischofskonferenz, *Missbrauch geistlicher Autorität. Zum Umgang mit Geistlichem Missbrauch* (Arbeitshilfen Nr. 338), Bonn 2023, p. 33. URL: [https://www.dbk-shop.de/media/files\\_public/ef92193ab4b5753e1d31b5e4c5961fc1/DBK\\_5338.pdf](https://www.dbk-shop.de/media/files_public/ef92193ab4b5753e1d31b5e4c5961fc1/DBK_5338.pdf) [last view: 04.06.2024].

<sup>144</sup> See: PIGHIN, *Sistema Penale* (see quote: 138), p. 367.

Canon 1389 CIC 1983 (old) has been criticized for its imprecise formulation.<sup>145</sup> According to Beal, Coriden and Green, “[t]he legislator seems to leave the articulation of the delict exclusively to the penalizing judge or ordinary”.<sup>146</sup> Due to the very limited access to (penal) case law, it is not astonishing that many commentaries do not clarify in greater detail how an abuse of “ecclesiastical power, office, or function” could materialize.<sup>147</sup> The German commentary edited by Lüdicke and the US commentary authored by Beal, Coriden and Green, as well as the Spanish commentary edited by Marzoa, Miras, and Rodríguez-Ocaña aim to provide at least some criteria. According to Lüdicke, one can speak of such an abuse “if the mission of the Church was unlawfully used or unlawfully not used” (own translation).<sup>148</sup> Unfortunately, he subsequently only further develops the second criterion (i.e. the unlawful non-use) which is of little relevance for the purpose of this study, while the definition of the first criterion (i.e. the unlawful use) remains rather vague.<sup>149</sup> According to the interpretation of Beal, Coriden and Green, the conditions for applying canon 1389 are fulfilled when perpetrators are “deliberately exercising the power of orders or jurisdiction or some other ecclesiastical function in a fashion contrary to its basic ecclesial purpose.”<sup>150</sup> Similarly, according to Marzoa, Miras, and Rodríguez-Ocaña, this type of abuse includes “any arbitrary behaviour in exercising public power in the Church (of order and/or of jurisdiction), or in performing an office.”<sup>151</sup> Arguably, both non-physical and physical abuse (in so far as it cannot be brought within the scope of canon 1397 §1) can fall under these definitions.

Lastly, it is noteworthy that the last phrase of the canon – *without prejudice to the obligation of repairing the harm* – was not included in the preceding version of this canon (i.e. canon

<sup>145</sup> See: GREEN, Thomas J. (Ed.), Commentary on cc. 1378-1389, New Commentary on the Code of Canon Law, p. 1593. Also see: GREEN, Thomas J., Commentary on: c. 1389, in: The Code of Canon Law. A Text and Commentary, p. 927. Also see: AZENAR, Frederico, Commentary on: c. 1389, in: Code de Droit Canonique Annoté, p. 776.

<sup>146</sup> GREEN, Thomas J. (Ed.), Commentary on cc. 1378-1389, New Commentary on the Code of Canon Law, p. 1593.

<sup>147</sup> See: c. 1378 §1 CIC/83. Also see: WOESTMAN, Ecclesiastical Sanctions (see quote: 140), p. 135f. Also see: GREEN, Thomas J., Commentary on: cc. 1387-1389, in: The Code of Canon Law. A Text and Commentary, p. 927. Also see: AZENAR, Frederico, Commentary on: cc. 1388-1389, in: Code de Droit Canonique Annoté, p. 776. Also see: ARIAS, Juan, Commentary on: c. 1389, in: Codice di Diritto Canonico e Leggi Complementari Commentato, p. 938.,

<sup>148</sup> Original passage: „wenn von dem Auftrag der Kirche rechtswidrig Gebrauch gemacht oder rechtswidrig nicht Gebrauch gemacht wurde.” See: LÜDICKE, Klaus, Commentary on c. 1389,2, in: MKCIC.

<sup>149</sup> See: LÜDICKE, Klaus, Commentary on c. 1389,2, in: MKCIC.

<sup>150</sup> GREEN, Thomas J. (Ed.), Commentary on cc. 1378-1389, New Commentary on the Code of Canon Law, p. 1593.

<sup>151</sup> MARZONA, Àngel, Commentary on: c. 1389, in: Exegetical Commentary on the Code of Canon Law, p. 528. Also see: MARZONA, Àngel, Commentary on: c. 1389, in: Commentario Exegético al Código de Derecho Canónico, Bd. 4,1 cc. 1254-1500, p. 562.

1389 CIC 1983 (old)).<sup>152</sup> The commentaries on canon 1389 CIC 1983 (old) affirmed that the occurrence of harm did not form a constitutive requirement for the conviction of a perpetrator under this canon.<sup>153</sup> Considering the new formulation of this canon, a literal interpretation might question the validity of this conclusion. Nevertheless, the new commentaries do not seem to discuss this issue.<sup>154</sup> Yet, Pighin still argues that the occurrence of harm is not a constitutive requirement “*since the abusive conduct itself (...) entails a socially relevant injury to the Christian community.*”<sup>155</sup> If that holds true, priests can be punished for coercive behavior even if the female victim did not suffer harm or – more likely – if the endured harm cannot be proven.

#### 4.2.3 Intentional “*violence*”<sup>156</sup>

In this last category, “*the violence of the act is fully obvious and this is intended by the perpetrator.*”<sup>157</sup> The criminalization of these cases depends on how violence is expressed. In the example given by Reisinger, a priest brutally conducted the abortion himself.<sup>158</sup> In this case, the offense is punishable under canon 1397 §2. As stated above, other forms of serious bodily injury can be persecuted on the basis of canon 1397 §1, while less serious forms of bodily injury and non-physical forms of intentional harm might be persecuted under canon 1378 §1.

## 5. Findings

The aim of this study was to explore the effectiveness of canon penal law in giving protection to adult women, who were sexually and reproductively abused by priests in the Roman Catholic Church. After first having depicted the prevalence of sexual and reproductive in the Church, the effectiveness of canon penal law was analyzed through the lens of European human rights law. Due to the limited scope of this study, it was decided to limit this evaluation

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<sup>152</sup> See: GRAULICH, Strafrecht (see quote: 106), p. 195.

<sup>153</sup> See: LÜDICKE, Klaus, Commentary on: c. 1389,1, in: MKCIC.

<sup>154</sup> See: GRAULICH, Strafrecht (see quote: 106), p. 195.. Also see: PIGHIN, Sistema Penale(see quote: 138), p. 368.

<sup>155</sup> Original passage translated with DeepL: “*poiché la stessa condotta abusiva, (...) comporta una ferita socialmente rilevante alla comunità cristiana*”. See: PIGHIN, Sistema Penale (see quote: 138), p. 368.

<sup>156</sup> REISINGER, Abuse (see quote: 18), p. 10.

<sup>157</sup> Ibid.

<sup>158</sup> See: Ibid.

to the question of whether the sexual and reproductive abuse of adult women is criminalized in canon penal law.

The sexual abuse of adults is criminalized in canon law under canons 1395 §3 and 1398 §1. Canon 1398 can only be invoked by an adult victim who either qualify as “*a person who habitually has an imperfect use of reason or with one to whom the law recognises equal protection*”.<sup>159</sup> While it is clear when an adult is considered to have “*an imperfect use of reason*”, ambiguity surrounds the correct classification of adults “*to whom the law recognises equal protection*”.<sup>160</sup> Adult victims, who cannot invoke canon 1398 §1, can seek recourse to canon 1395 §3, which can be relied upon by all types of adult victims under the condition that the priest abused the victim “*by force, threats or abuse of his authority*”. It must be counted as positive that the scope of these canons taken together likely encompass all cases in which an adult falls victim to sexual abuse. However, canon law classifies this sexual abuse differently, depending on whether it is persecuted under canon 1395 §3 or under canon 1398 §1. If an abuse case falls within the scope of canon 1398 §1, canon law recognizes that sexual abuse is a crime “*against human life, dignity and liberty*”.<sup>161</sup> If victims however must instead rely on canon 1395 §3, then the violation of their human dignity is not expressly acknowledged as the sexual abuse is criminalized as a crime “*against special obligations*”.<sup>162</sup> As Hahn rightly argues, it is unlikely that the legislator made a slip of the pen and that “*one must assume that legislation intentionally kept sexual violence against adults a mere issue of clerical discipline*.”<sup>163</sup> Consequently, the legislator fails to “*take into account the sexual integrity of adult victims or their right of self-determination*” in the context of canon 1395 §3.<sup>164</sup>

Contrary to sexual abuse, reproductive abuse is not directly criminalized in canon law. The only exception is the persecution of forced abortions on the basis of canon 1397 §2 in conjunction with canon 1329 §2. In all other cases, a legal detour must be constructed. Thereby,

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<sup>159</sup> c. 1398 §1 (1) CIC/83.

<sup>160</sup> Ibid. Also see: Vos estis lux mundi, art. 1 §2. Also see: COSTIGANE, Helen, Vos estis lux mundi. Too Far or Not Far Enough?, in: Ecclesiastical Law Journal 22,3 (2020), pp. 300-313. Also see: ORPHANOPoulos, Vulnerability (see quote: 103), p. 27f. Also see: RENKEN, Delicts (see quote: 16), pp. 98, 112.

<sup>161</sup> Book VI, Title VI CIC/83.

<sup>162</sup> Book VI, Title V CIC/83.

<sup>163</sup> HAHN, Offenses (see quote: 16), p. 5.

<sup>164</sup> See: Ibid.

rather than directly punishing the reproductive abuse, the priest's abusive behavior that lies at the root of the reproductive abuse is punished, e.g. if it manifests itself as sexual abuse (canons 1395 §3 and 1398), physical coercive behavior (canons 1378 §1 and 1397 §1), or as a non-physical form of coercive behavior (canon 1378 §1). It seems that for most, if not all cases of reproductive abuse, such a legal detour can be established. Therefore, it can be questioned whether it is desirable to plead for the creation of a legal basis in canon penal law to specifically address reproductive abuse. At the core of this question lies the realization that since the entering into force of the new canon penal law, we are increasingly becoming aware that next to sexual abuse, also other types of abuse exist that require penal persecution. This does not only affect reproductive abuse but also spiritual abuse, which, in the absence of a specific legal basis, can currently only be persecuted through the detour of canon 1378 §1. By not creating the possibility of directly criminalizing these other types of abuse, canon penal law could give the appearance that it does not consider them of equal importance to sexual abuse, even though they can have a similar impact on the victim. However, in order to place them on equal footing, it is necessary that more research is conducted on these other types of abuse to ensure that we acquire a clear understanding of what reproductive or spiritual abuse is (not). In other words, if we create a legal basis to directly persecute reproductive abuse in the absence of a commonly agreed upon set of criteria to determine whether a victim has suffered from reproductive abuse, then the introduction of this new legal basis will not lead to the desired result but will have the countereffect of contributing to legal uncertainty.