

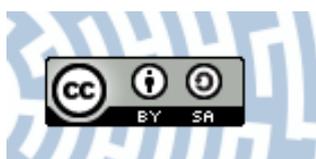


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Transsexualism, Homosexuality, and Priesthood. Canonical Remarks Concerning the Relevant *Ratio Fundamentalis Institutionis Sacerdotalis* Standards

Abstract: The scientific contemplation, inspired by the publication of the new *Ratio Fundamentalis*, is concentrated around the following issues: (1) accepting/not accepting to seminar, accepting/not accepting a transsexual person to the holy orders, (2) letting/not letting a homosexual person to the holy orders. Two assumptions accompany the detailed exploration of these issues. Firstly, what is key for achieving reliable research results is the affirmation of the appropriate anthropology, according to which both transsexualism and homosexuality are to be treated under common denominator as psychosexual disorders. Secondly, if the context closer to the research is defined by a doctrinal background, drafted for each of the mentioned phenomena, in the form of relevant anthropological and ethical, as well as theological and ecclesiological principles and guidelines included in numerous sources of the Church's Magisterium, then with reference to both transsexualism and homosexuality, an invaluable cognitive character is presented by especially one source document, namely the *Instruction* of the 2015 Congregation for Catholic Education.

Keywords: transsexualism, homosexuality, priesthood, adequate anthropology, canonical norms of CIC/1983, *Ratio Fundamentalis Institutionis Sacerdotalis*

Introductory Remarks

In continuity with the teaching of the Second Vatican Council and, in particular, with the Decree *Optatam Totius* on priestly formation, the Congregation for Catholic Education has published various documents with the aim of promoting a suitable, integral formation of future priests, by offering guidelines and precise norms regarding its diverse aspects. In the meantime, the 1990 Synod of Bishops also reflected on the formation of priests in the circumstances of the present day, with the intention of bringing to completion the doctrine of the Council on this theme and making it more explicit and effective in today's world. Following this Synod, Pope John Paul II published the Post-Synodal Apostolic Exhortation *Pastores Dabo Vobis*.¹

It is not without a reason that an attempt of an aspectual outlook on the new *Ratio Fundamentalis Institutionis Sacerdotalis*²—taking into consideration a crucial, however still poorly explored “matter” defined by the means of the title of this study—is worth to be initiated with an attentive “listening” to the voice of the 2005 Magisterium. Indeed, the importance of the mentioned words of the introduction to the well-known document of the Congregation for Catholic Education entitled *Instruction Concerning the Criteria for the Discernment of Vocations with Regard to Persons with Homosexual Tendencies in View of Their Admission to the Seminary and to Holy Orders*—essentially complete in the careful depiction of the doctrinal background and referring to the “signs of times”³—is possible to be evaluated knowing the closer context of their formulation. And it is about, no more no less, the presented in the document, authoritative (since having its support in papal authority)⁴ solution to the two important issues: (1) whether or not to let candidates who have disordered

¹ Congregation for Catholic Education, *Instruction Concerning the Criteria for the Discernment of Vocations with Regard to Persons with Homosexual Tendencies in View of their Admission to the Seminary and to Holy Orders* (November 4, 2005), Introduction, accessed December 28, 2017, http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20051104_istruzione_en.html. Henceforth as *Instruction 2005*.

² Congregation for the Clergy, *The Gift of the Priestly Vocation. Ratio Fundamentalis Institutionis Sacerdotalis* (December 8, 2016), accessed December 28, 2017, <http://www.clerus.va/content/dam/clerus/Ratio%20Fundamentalis/The%20Gift%20of%20the%20Priestly%20Vocation.pdf>. Henceforth as *Ratio Fundamentalis 2016*.

³ Vatican Council II, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes* (December 7, 1965), n. 4; International Theological Commission, *Theology Today: Perspectives, Principles and Criteria* (2011), n. 51–58, accessed December 28, 2017, http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_doc_20111129_tologia-oggi_en.html.

⁴ The text of the quoted document is crowned with a dictum: “The Supreme Pontiff Benedict XVI, on 31 August 2005, approved this present Instruction and ordered its publication,” *Instruction 2005*, Introduction.

sexual identity to seminar and let them obtain holy orders (an *implicite* given answer); (2) whether or not to accept to seminar and allow taking holy orders by candidates who show homosexual tendencies (question asked directly⁵ and an *explicite* given answer).

In order to shed brighter light on the hermeneutical horizon of research threads defined in such a way, it seems crucial to refer to one more source document. As far as the Congregation for Catholic Education rightly touches upon the significance of the “guidelines and precise norms” it issued, which concern the priestly formation, then in the researched “area” it seems difficult to overestimate the importance of the words of the Congregation for the Doctrine of the Faith from over 30 years ago, which can easily be called the catalyst in the gradual crystallization of the *novum* of the Church outlook on the mentioned issues. It is about the proclamation included in the *Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons*: “The human person, made in the image and likeness of God, can hardly be adequately described by a reductionist reference to his or her sexual orientation.”⁶ However, if we are to mention a gradual⁷ crystallization of the contemporary Church’s standpoint, the “ripe fruit” of which are conclusions of the quoted document from 2005 (as we can easily guess, introduced in the new *Ratio Fundamentalis*), then it seems right to mention that reaching these conclusions in the Church legal and pastoral practice did not escape the “reefs” of the old scheme thinking. It finds evidence in the standpoint of the Congregation for Divine Worship and the Discipline of the Sacraments, issued three years ago and signed by its prefect at that time, in which Jorge Arturo Medina Estévez in a flatly negative (and an unnuanced!) way answers the official question posed by a bishop,⁸ who

⁵ This question is posed already in the next paragraph of the Introduction: “In light of this abundant teaching, the present Instruction does not intend to dwell on all questions in the area of affectivity and sexuality that require an attentive discernment during the entire period of formation. Rather, it contains norms concerning a specific question, made more urgent by the current situation, and that is: whether to admit to the seminary and to holy orders candidates who have deep-seated homosexual tendencies.” Instruction 2005, Introduction.

⁶ Congregation for the Doctrine of the Faith, *Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons* (October 1, 1986), n. 16, accessed December 28, 2017, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html. The meaning of this magisterial speech is emphasized by, for example, the current prefect of the Congregation for Catholic Education, valued expert Giuseppe Versaldi, “Implicazioni psicologiche dell’Istruzione *In continuità* del 4 novembre 2005,” *Periodica de re canonica* 95 (2006): 463. In turn, the decisiveness of this entire document is highlighted by its commentator Giovanni Marchesi, “L’omosessualità: problema pastorale per la Chiesa. A proposito del documento vaticano,” *La civiltà cattolica* 137/4 (1986): 560–569.

⁷ See: Giovanni Marchesi, “Omossessualità e sacerdozio,” *La civiltà cattolica* 157/1 (2006): 167–170.

⁸ “Questa Congregazione per il Culto Divino e la Disciplina dei Sacramenti, tendendo presente l’esperienza che proviene da non poche cause istruite in vista di ottenere la dispensa dagli

asked whether men who show homosexual inclinations can receive the sacrament of the holy orders.⁹

These short, yet essential introductory remarks should be complemented with a description of the methodology of the contemplation conducted here. It seems right to emphasize that the specific passages of *Ratio Fundamentalis Institutionis Sacerdotalis* (2016), on which the research focus as a result of deliberating over the title issues, are located mainly (though not only) in the 8th chapter of the document, entitled “Criteria and Norms.”

What is important, from the very Introduction to the new *Ratio Fundamentalis* we can learn a lot about its roots in sources. So, it is completely just to follow this track. This means that the further (general) context of the remarks made here shall be defined by: (a) John Paul II’s *Pastores dabo Vobis* from 1992¹⁰—especially the statement it includes that matches a paradigm in importance: “an integrated vision of the formation of future clerics [...] [has to—A.P.] take into equal account all four dimensions that involve the person of the seminarian: human, intellectual, spiritual and pastoral”¹¹; (b) Benedict XVI’s *motu proprio Ministrorum institutio* from 2013¹²—in which it is difficult not to see an important message: the formation of seminarians and formation of permanent priests is a “uniform reality”¹³; (c) relevant canons of the Code of Canon Law

obblighi che derivano dalla sacra Ordinazione, e dopo doverosa consultazione con la Congregazione per la Dottrina della Fede, esprime suo giudizio nel modo seguente: L’ordinazione al diaconato e al presbiterato di uomini omosessuali o con tendenza omosessuale è assolutamente sconsigliabile e imprudente e, dal punto di vista pastorale, molto rischiosa. Una persona omosessuale o con tendenza omosessuale non è, per tanto, idoneo a ricevere il sacramento dell’Ordine sacro.” Congregation for Divine Worship and the Discipline of the Sacraments, Letter (May 16, 2002), *Notitiae* 38 (2002): 586.

⁹ The prominent expert in the subject matter Gianfranco Ghirlanda evaluates the then motives behind the decision of the prefect of the Congregation for Divine Worship and the Discipline of the Sacraments: *Dalla Lettera del Card. J. Medina Estévez [...] si evince che un numero consistente di richieste di dispensa dagli obblighi derivanti dall’Ordinazione trovano la sua ragione nella difficoltà da parte di uomini con tendenze omosessuali a vivere la castità celibataria.* Gianfranco Ghirlanda, “Aspetti canonici dell’Istruzione *In continuità* del 4 novembre 2005,” *Periodica de re canonica* 95 (2006): 404, n. 29.

¹⁰ John Paul II, “Post-Synodal Apostolic Exhortation *Pastores Dabo Vobis*” (March 25, 1992), *Acta Apostolicae Sedis* 84 (1992): 657–804. Henceforth as PDV.

¹¹ *Ratio Fundamentalis* 2016, Introduction. See: Timothy Costello, *Forming a Priestly Identity: Anthropology of Priestly Formation in the Documents of the VIII Synod of Bishops and the Apostolic Exhortation “Pastores dabo vobis”* (Roma: Editrice Pontificia Università Gregoriana, 2002).

¹² Benedict XVI, “*Motu proprio Ministrorum Institutio*” (January 16, 2013), *Acta Apostolicae Sedis* 105 (2013): 130–135.

¹³ Benedict XVI, “*Motu proprio Ministrorum Institutio.*” *Nota bene* that is the result of giving the Congregation for the Clergy, already responsible for permanent formation of clergymen, also the responsibility for their initial formation in a seminar, which was earlier the domain of the Congregation for Catholic Education.

from 1983¹⁴ (the source *explicite* mentioned here; however, also different as for example the relevant articles of the Catechism of the Catholic Church from 1992¹⁵). There is no way of avoiding the *meritum* of the message included in the final paragraph of the Introduction: “Guidelines of various kinds—theological, spiritual, pedagogical, canonical—are offered in the text of this *Ratio Fundamentalis*, along with actual norms, which mirror those of the Code of Canon Law, and determine more precisely the manner of their application.”¹⁶

In order to fulfill the rather complete outline of the adopted research assumptions, it is important to, naturally, present the closer (detailed) context connected with the subject matter issues specified in the title. These issues—as it was already possible to emphasize—focus on the following ones: (1) accepting/not accepting to seminar, accepting/not accepting a transsexual person to the holy orders, (2) letting/not letting a homosexual person to the holy orders. In planning a scientific exploration of these issues two issues seem to be relevant. Firstly, what is key for achieving reliable research results is the affirmation of the appropriate anthropology, according to which both transsexualism and homosexuality are to be treated under common denominator as psychosexual disorders. Secondly, even if the said context closer to the research should be defined by doctrinal background drafted for each of the mentioned phenomena in the form of relevant anthropological and ethical, as well as theological and ecclesiological principles and guidelines included in numerous sources of the Church’s Magisterium (among others previously presented), then—as it turns out—with reference to both transsexualism and homosexuality, an invaluable cognitive character is presented by especially one source document, namely, the 2015 *Instruction* mentioned at the very beginning.

Transsexualism and Priesthood

It should not come as a surprise that among the issues of the aforementioned 8th chapter of the new *Ratio Fundamentalis Institutionis Sacerdotalis* entitled “Criteria and Norms” a separate subsection found its place: “Psychological Health,”¹⁷ which indicates towards, among others, difficult to harmonize with priesthood

¹⁴ *Code of Canon Law* (promulgated: January 25, 1983). Henceforth as CIC.

¹⁵ *Catechism of the Catholic Church* (promulgated: October 11, 1992). Henceforth as CCC.

¹⁶ *Ratio Fundamentalis* 2016, Introduction. What draws attention here is referring to the regulations of can. 31 § 1 CIC regarding the general executory decrees, which “more precisely determine the methods to be observed in applying the law or which urge the observance of laws.”

¹⁷ *Ratio Fundamentalis* 2016, nn. 191–196.

personality pathologies connected with human sexuality, and among those are the mentioned paraphilias.¹⁸ Indeed, here we can easily talk about a new—taking into consideration the circumstances of the present day¹⁹—approach to the greatly desired early diagnosing in a candidate for priesthood personality pathologies in the shape of sexual background disorders: firstly, sexual identity disorders (transsexualism), but also disorders of sexual preferences or sexual dysfunctions. The contrast between the old and the new approach is visible in that way that in the previous *Ratio Fundamentalis* (1985) the concepts of physical and mental health of candidates appeared en passant.²⁰ The authors of the 2016 *Ratio Fundamentalis* do not leave any space for doubt here by putting forward a clear recommendation for bishops and all others responsible for priestly formation: “As a rule candidates will not be admitted to Seminary who suffer from any pathology [...] that could undermine the discretion of judgment of a person and, consequently, his ability to assume the obligations of the vocation and of the ministry.”²¹

We are allowed to ask about the way such a standpoint of the Church is anchored in sources. Indeed, there is no shortage of such source references in the discussed document. Firstly, a well known fragment of the Pastoral Adhortation *Pastores dabo Vobis*, evoked in *Ratio Fundamentalis*²² sheds light on the truth that the holy orders require from the one who received them, a full gift from oneself for the service for the People of God, as showed by Christ the Betrothed.²³ In turn, this truth is referred to by numbers 92 and 94 of the *Ratio Fundamentalis*. Alongside the “classic” exhibition of human formation, as the foundation for the entire priestly formation,²⁴ emphasized by means of a statement that suggests that the aim of human formation is “the integral growth of the person,”²⁵

¹⁸ *Ratio Fundamentalis* 2016, n. 191.

¹⁹ Instruction 2005, Introduction.

²⁰ Sacra Congregazione per l’Educazione Cattolica, *Ratio fundamentalis institutionis sacerdotalis*, (March 19, 1985), n. 39, accessed December 28, 2017, http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_19850319_ratio-fundamentalis_it.html. Henceforth as *Ratio Fundamentalis* 1985.

²¹ *Ratio Fundamentalis* 2016, n. 191.

²² *Ratio Fundamentalis* 2016, n. 39.

²³ PDV, n. 22.

²⁴ Cf. PDV, n. 43.

²⁵ “Human formation, being the foundation of all priestly formation, promotes the integral growth of the person and allows the integration of all its dimensions. [...] Psychologically it focuses on the constitution of a stable personality, characterized by emotional balance, self-control and a well integrated sexuality. In the moral sphere, it is connected to the requirement that the individual arrive gradually at a well formed conscience. This means that he will become a responsible person able to make the right decisions, gifted with right judgment and able to have an objective perception of persons and events. [...] He ought to be aware of the social environment, and be helped to improve his capacity for social interaction, so that he can contribute to building up the community in which he lives.” *Ratio Fundamentalis* 2016, n. 94.

the authors of the document establish that: “The concept of integral formation is of the greatest importance, since it is the whole person, with all that he is and all that he possesses, who will be at the Lord’s service in the Christian community. The one called is an ‘integral subject,’ namely someone who has been previously chosen to attain a sound interior life, without divisions or contradictions.”²⁶

Precisely, this passage of *Ratio Fundamentalis* allows us to formulate a crucial conclusion: a positive identification of the “integral subject,” unambiguously attributed to a candidate for priesthood, constitutes a reference point for the entire dynamics of the seminary formation process.²⁷ Obviously, this anthropological paradigm has an impact on the very exposure, in the document, of the profile of this formation (with widely outlined aspects: physical, psychological, moral, and social). Suffice it to say that in the doctrinal horizon, described in such a way and enriched with the results of experts’ research,²⁸ an intentional emphasis of the importance of the psychological dimension of formation is inscribed. Therefore, what does it mean that bringing up to date the requirements that directly refer to the psychological and personal structure of a candidate to holy orders is not only desired but also essential? The authors of *Ratio Fundamentalis* do not leave this question without an answer: a candidate should have “a stable personality, characterized by emotional balance, self-control and a well integrated sexuality.”²⁹

Not in a different way that through the prism of a paradigmatic “integral subject,” we should perceive the elementary criteria of verifying a candidate’s abilities of realizing the social dimension of formation, so—using the words of the analyzed document—“capacity for social interaction, so that he can

²⁶ *Ratio Fundamentalis* 2016, n. 92.

²⁷ Adopting a similar assumption, Timothy Costello rightly notices: “The Synod, and especially PDV, understands maturity as the basis upon which priestly identity rests. This represents a strengthening of earlier statements and an advance in the church’s thinking to the extent that human maturity is regarded as pivotal and not merely as one among many factors to be considered. In this respect the insight finds scientific corroboration in the research of Rulla, Ridick and Imoda.” Costello, *Forming a Priestly Identity*, 115–116. See Luigi M. Rulla, Joyce Ridick, and Franco Imoda, *Entering and Leaving Vocation: Intrapsychic Dynamics* (Roma: Editrice Pontificia Università Gregoriana, 1988).

²⁸ “The three dimensions are [...] aspects of the person or, more precisely, three acquired habitual dispositions which have an axiological foundation. The first dimension is prevalently conscious and corresponds to the motivational disposition to transcend the self for the sake and moral and religious values. [...] In the second dimension the person is confronted with a combination of self-transcendent (moral and religious) values together with natural values. [...] The third dimension is oriented primarily towards natural values and leads to the progressive development of psychic structures which enable the person to function normally or with varying degrees of psychopathology.” Costello, *Forming a Priestly Identity*, 26–27.

²⁹ *Ratio Fundamentalis* 2016, n. 94.

contribute to building up the community in which he lives.”³⁰ The first criterion is connected with the fundamental truth that the Creator inscribed in the personal being of a human a binary sexual structure: “being a man” and “being a woman.” According to the Christian anthropology “sexuality [...] is by no means something purely biological, but concerns the innermost being of the human person as such.”³¹ Sexuality of a person in whom soul and body constitute one entity can be understood ontologically (integrally) as impressing a birthmark on the entire human existence. This integrated sexuality in the integral subject, in turn, has influence on the second elementary criterion, described by the authors of *Ratio Fundamentalis* in the following formulas: “an ability to establish mature and well balanced interpersonal relationships”³² and “a mature capacity for relations with men and women.”³³ It is about an ability to go beyond oneself and toward a mature interpersonal bond with men and women, especially the ability of dynamic creation of communion bonds with the area of Church community.³⁴

This thread of contemplating the subject should be concluded by means of remarks that would be relevant in the place of canon law.

Firstly, if the quoted elementary criteria of mature personality (“well-integrated sexuality,” ability to “enter into relations”) should be used in relation to every candidate for the holy orders, then it also concerns—consistently—the circle of people defined by means of the title of this study.³⁵ At the same time, there is no doubt that both the decision about admitting one to the seminary and the evaluation of the formation result in the act of allowing one to receive holy orders and are located in the area of responsibility (rights and duties) of a diocesan bishop³⁶—supported directly by the rector of the seminary and form

³⁰ *Ratio Fundamentalis* 2016.

³¹ John Paul II, Apostolic Exhortation *Familiaris Consortio* (November 22, 1981), n. 11.

³² *Ratio Fundamentalis* 2016, n. 94.

³³ *Ratio Fundamentalis* 2016, n. 95.

³⁴ Similarly, a Polish theologian Czesław Rychlicki—based on, among others, the research of Albino Ronco and Vittorio Gambino—emphasizes two principles which have a crucial role in the process of priestly formation and as such are subject to verification in the process of admitting one to the holy orders: “the principle of directing oneself and the principle of participation.” Czesław Rychlicki, “Ludzka formacja kandydatów do kapłaństwa według *Pastores dabo vobis*,” *Studia Płockie* 24 (1996): 79–84. Cf. Albino Ronco, “Formazione umana di base del futuro pastore,” in *Sacerdoti per la nuova evangelizzazione. Studi sull’Esortazione apostolica “Pastores dabo vobis” di Giovanni Paolo II*, edited by Enrico Dal Covolo and Achille M. Triacca (Roma: Libreria Ateneo Salesiano, 1994), 163–169; Vittorio Gambino, *Dimensioni della formazione presbiteriale: prospettive dopo il Sinodo del ‘90 e la “Pastores dabo vobis”* (Torino: Leumann, 1993).

³⁵ Naturally, these elementary criteria—treated together with detailed criteria (these will be the topic of contemplation in the next section)—remain valid in the objective evaluation of a homosexual person’s fitness.

³⁶ “One should always keep in mind that, for the good of the Church, pastoral charity, at all levels of responsibility, is not manifested by admitting whomsoever to the Seminary, but by

tutors,³⁷ as well as others responsible for the formation (among others, specialists³⁸). Indeed, the said verification of *abilitas* (*capacitas*) of a candidate is conducted according to the rule evoked in *Ratio Fundamentalis*: “The Church has the right to verify the suitability of future priests, including by means of recourse to medical and psychological science.”³⁹ The precise legal foundation of Church’s conduct can. 241 § 1 CIC.⁴⁰

Secondly, due to the extraordinary responsibility of the rector and other formators for vocational discernment, what is desired and necessary is the help of experts in the psychological sciences, representing “the Christian vision about the human person, sexuality, as well as vocation to the priesthood and to celibacy. In this way, their interventions may take into account the mystery of man in his personal dialogue with God, according to the vision of the Church.”⁴¹

Thirdly, according to the *Guidelines for the Use of Psychology in the Admission and Formation of Candidates for the Priesthood*, announced in 2008 by the Congregation for Catholic Education (and confirmed in the new *Ratio Fundamentalis*⁴²), the participation of an expert in the examination of a candidate’s fitness (as part of the so-called Initial Discernment⁴³) can result in, among others, issuing the following opinion⁴⁴: “a sexuality identity [...] is confused or not yet well defined,”⁴⁵ or issuing the contrary opinion. In the first case—should transsexualism be diagnosed—the following rule will be used: “[...] candidates

offering well thought out vocational guidance and a sound process of formation.” *Ratio Fundamentalis* 2016, n. 128.

³⁷ Cf. CIC, can. 239.

³⁸ *Ratio Fundamentalis* 2016, nn. 145–147.

³⁹ *Ratio Fundamentalis* 2016, n. 189.

⁴⁰ “Ad seminarium maius ab Episcopo dioecesano admittantur tantummodo ii qui, attentis eorum dotibus humanis et moralibus, spiritualibus et intellectualibus, eorum valetudine physica et psychica necnon recta voluntate, habiles aestimantur qui ministeriis sacris perpetuo sese dedicent.”

⁴¹ *Ratio Fundamentalis* 2016, n. 192. Congregation for Catholic Education, *Guidelines for the Use of Psychology in the Admission and Formation of Candidates for the Priesthood* (June 29, 2008), n. 8, accessed December 28, 2017, http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20080628_orientamenti_en.html. Henceforth as *Guidelines* 2008. See also: Giuseppe Versaldi, “Uso della psicologia nella formazione sacerdotale e religiosa nel rispetto dei diritti della persona,” *Periodica de re canonica* 83 (1994): 449–464; Tomasz Gałkowski, “Wiedza psychologiczna w formacji kandydatów do kapłaństwa,” *Prawo kanoniczne* 53/1–2 (2010): 41–59.

⁴² *Ratio Fundamentalis* 2016, n. 192–195. To clarify, in the previous *Ratio Fundamentalis* this matter was described merely by a general statement: “Il giovane deve [...] godere della libertà psicologica interna ed esterna, e possedere il necessario grado di maturità affettiva, per poter sperimentare e vivere il celibato come completamento della sua persona.” *Ratio Fundamentalis* 1985, n. 48.

⁴³ *Guidelines* 2008, n. 8.

⁴⁴ *Ratio Fundamentalis* 2016, n. 192.

⁴⁵ *Guidelines* 2008, n. 8.

will not be admitted to Seminary [nor allowed to receive holy orders—A.P.] who suffer from any pathology.”⁴⁶

It is not difficult to guess what personality pathology this description concerns. Indeed, since David Olivier Cauldwell defined transsexualism in 1949,⁴⁷ and not long after precisely acknowledging it to be a sexual identity disorder,⁴⁸ there has been no doubt it is an illness syndrome. The best confirmation of this fact is the invariable presence of transsexualism in the WHO Classification of Mental and Behavioural Disorders (ICD-10, 1992),⁴⁹ as well as on the list of mental disorders published by the American Psychiatric Association—under the diagnostic name: “gender identity disorder” (DSM-4-TR, 2000), or since not long ago: “gender dysphoria” (last edition: DSM-5, 2013). What proves that in the most explicit way is its qualification on the list of psychological disorders issued by the American Psychiatric Association—under the diagnostic name: “gender identity disorder” or “gender dysphoria” (last edition: DSM-5, 2003).⁵⁰

It is worth reminding that according to the classic depictions we deal with a correct sexual identity when a human in the area of external behavior takes on the sexual role compatible with somatotype, that is, the morphological construction of his or her body. It is about the biological sex, the determinant of which are, on the one hand, concepts that define primary sexual features (internal sex organs): “genetic sex” (criterion: type of sex chromosomes—men 46,XY;

⁴⁶ *Ratio Fundamentalis* 2016, n. 191; cf. CIC, can. 241 § 1, can. 1041 n. 1, can. 1051 n. 1.

⁴⁷ “David Oliver Caudwell, an American sexologist, introduced the term ‘transsexualism’ in 1949 for those wishing to change physiological sex, and distinguished between biological and psychological sex.” Sarah Murjan and Walter Pierre Bouman, “Transgender—Living in a Gender Different from That Assigned at Birth”, in *The Palgrave Handbook of the Psychology of Sexuality and Gender*, edited by Christina Richards and Meg John Barker (Hampshire: Palgrave Macmillan, 2015), 200.

⁴⁸ Harry Benjamin, *The Transsexual Phenomenon* (New York: Julian Press 1966).

⁴⁹ “A desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one’s anatomic sex and a wish to have hormonal treatment and surgery to make one’s body as congruent as possible with the preferred sex. Diagnostic guidelines: For this diagnosis to be made, the transsexual identity should have been present persistently for at least 2 years, and must not be a symptom of another mental disorder, such as schizophrenia, or associated with any intersex, genetic, or sex chromosome abnormality.” World Health Organization, *The ICD-10 Classification of Mental and Behavioural Disorders. Clinical Descriptions and Diagnostic Guidelines*, F64.0 (Gender identity disorders. Transsexualism), 168, accessed December 28, 2017, <http://www.who.int/classifications/icd/en/bluebook.pdf>.

⁵⁰ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (Arlington, VA: American Psychiatric Association, 2013), Gender Dysphoria, 451–459; cf. Murjan, Bouman, *Transgender*, 203. I omit the strongly discussed in the scientific circles issue whether it is only about a small alteration or about a foreboding of a real change of approach of the American Psychiatric Association towards the phenomenon of transsexualism (similarly as it happened in 1973 in case of homosexuality).

women: 46,XX), “gonadal sex” (criterion: type of gonad—in men: testicles, in women: ovaries), “gametal sex” (criterion: type of produced gametes—in men: spermatozoon, in women: ova), “hormonal sex” (criterion: type and volume of secreted sex hormones—in men androgens prevail, in women: estrogens). On the other hand, a determinant of biological sex is “phenotypic sex,” which defines both secondary sexual features (external sex organs—men: penis and scrotum, women: clitoris and labia) and third-rate features (different for men and women body proportions, hair, timbre).⁵¹

Here, moreover—not immersing in the twists and turns of these really complicated issues—two complementing remarks seem essential. Firstly, the contemporary medical and psychological literature connects inseparably the description of a proper sexual identification with the concept of “brain sex,” which also refers to the area of somatics.⁵² Secondly, proving in the subject matter research works the dynamics of shaping the sexual identification: from conception to full maturity⁵³ confirms—according to the new paradigm of research on sex—the fact of coexistence in this process of biological and cultural factors⁵⁴ (*nota bene* in the ideological promotion of the “advantage” of the latter ones, it is the concept of “gender” which made an incredible career⁵⁵).

⁵¹ CCC, art. 2332.

⁵² Since the early 1990s medical and psychological publications concentrate on the concept of “brain sex” (differences in the construction of brain determine mental sex, and what decides about sex are not only genes but also hormones). See: Anne Moir and David Jessel, *Brain Sex: The Real Difference between Men and Women* (New York: Carol Publishing Group, 1991).

⁵³ This research shows that, among others, at every stage of development the identification process might be disturbed, and the behavior of a child typical for opposite sex: clothes, interests or games, might result from parents’ decisions connected with, for example, desire to have an opposite sex child, or a low position of father in family.

⁵⁴ In order to tell apart biological sex from the so called social-cultural sexual identity, the concept of “gender” has been adopted. In the same way that the biological sex refers to somatics, gender refers to psyche. Unfortunately, the concept of “gender” is used nowadays to promote, as part of *gender studies* (social science that appeared in 1970s as an effect of the so called second wave of feminism), a one-sided and harmful concept, according to which sex is mainly shaped by culture and that is why—contrary to the stereotypes of femininity/masculinity—sex can change according to the social and cultural trends, as well as individual circumstances. *Gender studies* constitute an element of a far-flung political strategy (*gender mainstreaming*), aimed at eliminating instances of discrimination of women and promoting sustainable relations between men and women. See: *Idea „gender” jako wyzwanie dla teologii*, edited by Antoni Jucewicz and Marian Machinek (Olsztyn: Hosianum 2009); *„Mężczyznę i niewiastę stworzył ich.” Afirmacja osoby ludzkiej odpowiedzi nauk teologicznych na ideologiczną uzurpację genderyzmu*, edited by Andrzej Pastwa (Katowice: Księgarnia św. Jacka, 2012).

⁵⁵ See: Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990). In the 2008 *Address to the Roman Rota* Benedict XVI defined standing in opposition to the gender ideology through the promotion of properly understood “Human Ecology” as a pressing task for the Church: “What is often expressed and understood by the term ‘gender’ ultimately ends up being man’s attempt at self-emancipation from creation and the Creator [...] in

Not losing from sight the fundamental reference point in the contemplation of the discussed issue, namely, assumptions of the adequate anthropology, in formulating theses and deriving canon law conclusions it is important to bear in mind the magisterial clarification: “Sexuality affects all aspects of the human person in the unity of his body and soul. It especially concerns affectivity, the capacity to love and to procreate, and in a more general way the aptitude for forming bonds of communion with others.”⁵⁶ It is exactly on the groundwork of such defined phenomenon of sex that the Catechism of the Catholic Church formulates an explicit indication: “Everyone, man and woman, should acknowledge and accept his or her sexual identity.”⁵⁷

Referring directly to the title problem, it should be acknowledged that a proper sexual identification is characterized in the mental area and consistent with one’s biological sex feeling of belonging to male or female sex. Transsexualism (type: M/F or type F/M) constitutes a sex identity disorder which can be characterized by a radical discrepancy between the subjective sexual identification and the objective sexuality of a given person. As long as the personal development of a person is characterized by a harmonious conformity between the feeling of gender and biological sex, an obsessive “transsexual” desire to belong to the opposing sex radically undermines this conformity. Transsexual people aim at taking social roles according to their mental feeling of sex, which potentially exposes them to conflicts with cultural norms (secondarily, it concerns also the sexual area: sexual drive towards representatives of the same sex is perceived to be heterosexual). Transsexuals with a syndrome of serious identity disorders (as opposed to the syndrome of “uncertain identity”) aim at a surgical change of sex and an official recognition of a “new” marital status.⁵⁸ These changes are, however, only superficial (the operation changes merely the phenotype features) and do not change the very sexual nature of humans (the genetic sexual structure remains unchanged): a man in his essence remains a man, and a woman remains a woman.⁵⁹

opposition to the truth, in opposition to the Creator Spirit.” Benedict XVI, *Address to the Members of the Roman Curia for the Traditional Exchange of Christmas Greetings* (December 22, 2008), accessed December 28, 2017, http://w2.vatican.va/content/benedict-xvi/en/speeches/2008/december/documents/hf_ben-xvi_spe_20081222_curia-romana.html. Cf. Giuseppe Dalla Torre, “Identità sessuale e diritto canonico,” in *Atti del convegno nazionale dell’U.G.C.I. Palermo, 9–11 dicembre 2010* (Milano: Giuffrè, 2012), 132; see also: Laura Palazzani, “Identità di genere come problema biogiuridico,” in *Identità sessuale e identità di genere. Atti del convegno nazionale dell’U.G.C.I. Palermo, 9–11 dicembre 2010* (Milano: Giuffrè, 2012), 7–23.

⁵⁶ CCC, art. 2332.

⁵⁷ CCC, art. 2333.

⁵⁸ See more: Christiane Ant, *Transsexualität und menschliche Identität. Herausforderung sexualethischer Konzeptionen* (Münster–Hamburg–London: Lit Verlag, 2000).

⁵⁹ Here it seems worth to point to the fact that in the official statement from 1991 the Congregation for the Doctrine of the Faith established in some person “new” gender merely

Putting the issue of transsexualism on a canon law plane, it seems right to begin from an introductory remark. Although the Code of Canon Law did not directly define the canon law position of people afflicted with transsexualism (which is *nota bene* understandable), the following general rule is binding: declaring by the church the existence of objective obstacles in the realization of some subjective laws does not change the fact that transsexual people, on a par with others, enjoy elementary rights of followers announced in can. 208–223 CIC.

Having presented this assumption, we can proceed to the crux of the researched issue. While evaluating the fitness of a transsexual person for receiving holy orders, the following has to be taken into consideration: (1) current knowledge; (2) differences between secondary transsexualism (acquired after birth as a result of mistakes in the process of upbringing, influence of environment) from primary (innate, genetic); (3) principle that “the categories that belong to psychiatry or psychology are not automatically transferred to the field of canon law.”⁶⁰ Within this context, what acquires meaning is the fact that in the medical doctrine with reference to transsexualism depictions classifying types are preferred (types, types of disorders), and what is unfortunately omitted are quantifying depictions (gravity of disorders). In the legal and canonical order the latter ones are relevant and require being taken into consideration.

In the light of the canonical doctrine a subject capable of receiving valid holy orders is a baptized man.⁶¹ It is about a man (*vir*) in his ontological fullness—among others with a harmonious development of physical and mental sexuality. Therefore, we cannot allow a situation when both a non-operated transsexual man, as well as an operated transsexual woman (F/M) with a serious antagonism of somatic and mental factors in the sexual self-determination decides about the *defectus sexus virilis*.⁶² Especially in a primary transsexual, there is

phenotypically, in the face of invariably existing biological sex. Kongregation für die Glaubenslehre, “Schreiben vom 28. Mai 1991 an dem Vorsitzenden der Deutschen Bischofskonferenz zur Eheschließung von Transsexuellen,” *De processibus et matrimonialibus* 2 (1995): 315. Urbano Navarrete speaks out in a similar way: “Iuvat in memoriam hic revocare [...] operationes chirurgicas non mutare structurum geneticam, cromosomaticam, gonadicam individui; quod attingit vero data phaenotypica mutationes non sunt nisi valde accessoriae et cum exitu reapse monstruoso. Ideo persona remanet eiusdem sexus ac re vera erat ante operationes chirurgicas.” Urbano Navarrete, “Transsexualismus et ordo canonicus,” *Periodica de re canonica* 86 (1997), in *Zukunftshorizonte katholischer Sexualethik*, edited by Konrad Hilpert (Freiburg im Breisgau: Herder, 2011), 353.

⁶⁰ John Paul II, “Address to the Tribunal of the Roman Rota” (January 25, 1988), accessed December 28, 2017, http://w2.vatican.va/content/john-paul-ii/en/speeches/1988/january/documents/hf_jp-ii_spe_19880125_roman-rot.html.

⁶¹ CIC, can. 1024.

⁶² The expert in the subject matter area Maurizio Faggioni rightly notices: “Sia nel caso del *maschio transessuale non operato* sia della *donna transessuale operata* siamo di fronte a un’i-

a potential irregularity for receiving the holy orders, classified in the Code of Canon Law as the “other psychic illness”; such a candidate “is judged unqualified to fulfill the ministry properly.”⁶³

Since in the case of choosing the priesthood⁶⁴ we cannot speak about a free choice—so there is no right to the holy orders that would be parallel to *ius connubii*⁶⁵—then not only acknowledged fact of primary transsexualism but also secondary transsexualism, due to the mentioned gravity of disorders in a candidate, will decide about his negative admission to seminary and, as a result, impossibility to receive the holy orders. What is more, in the light of the binding law, a comprehensive justification can be found for a person responsible (rector) taking the very decision, when the affiliation of a candidate to the male sex proves to be only doubtful.⁶⁶

Hypothetically, after the transsexual person has accepted the holy orders⁶⁷ it is still possible to nullify them⁶⁸ *ex defectu sexus*, that is, due to the existence of anomalies that deeply destroy the sexual identity of the ordained person—obviously when the holy orders are bestowed (the sacramental character excludes the retroactivity of law). Apart from that, the occurrence of the mentioned anomalies after bestowing the holy orders (e.g., undergoing sex change operation M/F) is connected with the occurrence of abnormalities in delivering the holy orders⁶⁹ and thus justifies the request for a rescript concerning transfer to secular state.⁷⁰

nadeguata definizione della sessualità maschile nelle sue componenti fisiche e psichiche e questo li rende *non capaci* dell'ordinazione per *defectus sexus virilis*.” Maurizio P. Faggioni, “Il transsexualismo. Questioni antropologiche, etiche e canonistiche,” *Antonianum* 75 (2000): 304–305.

⁶³ “Ad recipiendos ordines sunt irregulares: (1) qui aliqua forma laborat amentiae aliisque psychicae infirmitatis, qua, consultis peritis, inhabilis iudicatur ad ministerium rite implendum,” CIC, can. 1041, n. 1.

⁶⁴ CIC, can. 219.

⁶⁵ Cf. CIC, can. 1058.

⁶⁶ “Non esistendo, come per il matrimonium, un diritto a ricevere l'ordine sacro, secondo la tradizione canonistica basta che l'appartenenza al sesso maschile anche soltanto *dubbia* perché il soggetto non possa essere ammesso all'ordinazione.” Maurizio P. Faggioni, “Il transsexualismo,” 305.

⁶⁷ See: Navarrete, “Transsexualismus et ordo canonicus,” 119–121.

⁶⁸ “Sacra ordinatio, semel valide recepta, numquam irrita fit. Clericus tamen statum clericalem amittit: [...] sententia iudicali aut decreto administrativo, quo invaliditas sacrae ordinationis declaratur.” CIC, can. 1041, n. 1.

⁶⁹ CIC, can. 1044 § 1, n. 3 and can. 1041, n. 5: “Ad exercendos ordines receptos sunt irregulares [...] qui seipsum vel alium graviter et dolose mutilaverit vel sibi vitam adimere tentaverit.”

⁷⁰ “Sacra ordinatio, semel valide recepta, numquam irrita fit. Clericus tamen statum clericalem amittit: [...] rescripto Apostolicae Sedis; quod vero rescriptum diaconis ob graves tantum causas, presbyteris ob gravissimas causas ac Apostolica Sede conceditur.” CIC, can. 290 n. 3.

Homosexuality and Priesthood

Adopted in the title of the study, the formula of illuminating this issue in the form of remarks—which, taking into consideration the complexity⁷¹ of the subject matter, constitutes merely an announcement of some draft (in the synthetic form)—imposes also within this segment of canon law research a care for methodological discipline. This means a consistent contemplation of the issue within the area of anthropological and ethical, as well as ecclesiological assumptions put forward before. Therefore, it seems unnecessary to add that the entire doctrinal “background” in the form of declaration and directives of the Church Magisterium, presented while discussing the issue of transsexualism, remains timely. Indeed, what seems just here as a repeated reference to the anthropological paradigm (“integral subject”) is an elementary reference point for a genuine discourse and formulating appropriate theses. Naturally, it is about the adopted in the *Ratio Fundamentalis* rule—gauge of a responsible verification of a candidate’s fitness (*abilitas*) to be admitted to a seminary and priesthood. A candidate should be characterized by: “a stable personality, characterized by emotional balance, self-control and a well integrated sexuality.”⁷²

The aforementioned general magisterial indications require complementation with a detailed source material, directly regarding the issue of homosexuality and priesthood. There is a fundamental reason for that. In chapter VIII “Criteria and Norms” of the analyzed document (*Ratio Fundamentalis* 2016) subsection C appeared, namely, “Persons with Homosexual Tendencies.”⁷³ A careful recipient of the quoted declarations and guidelines of the Congregation for the Clergy will, first of all, pay attention to the fact that the instructive introduction to the content of this—no matter what we say: bold in its conclusions (if not breakthrough)—part of *Ratio Fundamentalis* is the previous subsection B entitled “Admission, Dismissal and Departure from the Seminary.”⁷⁴ which is initiated by means of the already quoted sentence: “The Church has the right to verify the suitability of future priests, including by means of recourse to medical and psychological science.”⁷⁵ In the footnote to this constatation the regulation of can. 241 § 1 CIC was mentioned: “A diocesan bishop is to admit to a major seminary only those who are judged qualified to dedicate themselves permanently to the sacred ministries; he is to consider their human, moral,

⁷¹ See: Tony Anatrella, *La teoria del gender e l’origine dell’omosessualità* (Cinisello Balsamo: San Paolo Edizioni, 2015³). Cf. also “Le omosessualità,” in *Concilium* 44 (2008/1).

⁷² *Ratio Fundamentalis* 2016, n. 94.

⁷³ *Ratio Fundamentalis*, nn. 199–201.

⁷⁴ *Ratio Fundamentalis*, nn. 189–198.

⁷⁵ *Ratio Fundamentalis*, n. 189.

spiritual, and intellectual qualities, their physical and psychic health, and their correct intention.” In turn, the second source mentioned in the said footnote constitute the *Guidelines for the Use of Psychology in the Admission and Formation of Candidates for the Priesthood* (2008), and precisely number 11—with the abundance of objective content offering evaluation and specifying obligation (constatations, directives).⁷⁶ What underlines the significance of this document (as it was already possible to notice) is the fact that a little bit farther, in the subsection dedicated to mental health the authors of *Ratio Fundamentalis* once again repeat (literally) the recommendations included in the Guidelines. “It is useful for the Rector and other formators to be able to count on the cooperation of experts in the psychological sciences [...] [representing—A.P.] the Christian vision about the human person, sexuality, as well as vocation to the priesthood and to celibacy. In this way, their interventions may take into account the mystery of man in his personal dialog with God, according to the vision of the church.”⁷⁷

After this short delineation of the general magisterial background we can focus on the key, title context, subsection C: “Persons with Homosexual Tendencies.” It should be immediately noticed that not a single code provision was evoked here. Instead there is—alongside the articles referred to in the footnotes of the Catechism of the Catholic Church regarding homosexuality (art. 2357–2358)⁷⁸—a wide reference, in a form of quotes, to the source document, the cognitive and normative value of which now, like before, we will be able to familiarize ourselves with, namely, the *Instruction Concerning the Criteria for the Discernment of Vocations with Regard to Persons with Homosexual Tendencies*.

⁷⁶ At first a crucial statement appears: “It belongs to the Church to choose persons whom she believes suitable for the pastoral ministry, and it is her right and duty to verify the presence of the qualities required in those whom she admits to the sacred ministry.” Subsequently the authors of the document stamp this statement with either formulas taken from the Code of Canon Law (CIC, can. 1051, n. 1, can. 1052 § 1 and § 3), or the general reference to the regulations of this Code (CIC, can. 1025, can. 1051, can. 1052).

⁷⁷ *Ratio Fundamentalis* 2016, n. 192.

⁷⁸ “Homosexuality refers to relations between men or between women who experience an exclusive or predominant sexual attraction toward persons of the same sex. It has taken a great variety of forms through the centuries and in different cultures. Its psychological genesis remains largely unexplained. Basing itself on Sacred Scripture, which presents homosexual acts as acts of grave depravity, tradition has always declared that ‘homosexual acts are intrinsically disordered.’ They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved” (CCC, art. 2357). “The number of men and women who have deep-seated homosexual tendencies is not negligible. This inclination, which is objectively disordered, constitutes for most of them a trial. They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided. These persons are called to fulfill God’s will in their lives and, if they are Christians, to unite to the sacrifice of the Lord’s Cross the difficulties they may encounter from their condition” (CCC, art. 2358).

cies in View of Their Admission to the Seminary and to Holy Orders (2005). It is precisely in this document that the Congregation for Catholic Education directly defines the authoritative illumination of the analyzed problem of homosexuality and priesthood as “urgent.”⁷⁹ A troublesome question appears: “whether to admit to the seminary and to the holy orders candidates who have deep-seated homosexual tendencies.” As an answer, in the three chapters the following issues are contemplated: “Affective Maturity and Spiritual Fatherhood,”⁸⁰ “Homosexuality and the Ordained Ministry,”⁸¹ “Discernment by the Church Concerning the Suitability of Candidates.”⁸² What is crucial, the relevant subject magisterium culminates already in the middle segment of the document.

In the second chapter of the Instruction the key passage appears, which should be understood as an extracode formulation of a given directive of conduct (universal, however devoid of the importance of an act⁸³). Therefore, we should not be surprised that these normative instructions were *in extenso* transferred to *Ratio Fundamentalis*: “[The Congregation for Catholic Education—A.P.], in accord with the Congregation for Divine Worship and the Discipline of the Sacraments, believes it necessary to state clearly that the Church, while profoundly respecting the persons in question, cannot admit to the seminary or to holy orders those who practice homosexuality, present deep-seated homosexual tendencies or support the so-called gay culture. Such persons, in fact, find themselves in a situation that gravely hinders them from relating correctly to men and women. One must in no way overlook the negative consequences that can derive from the ordination of persons with deep-seated homosexual tendencies.”⁸⁴ Immediately after there is a indication of the Instruction, which complements this directive and which also found its place in *Ratio*: “Different, however, would be the case in which one were dealing with homosexual tendencies that were only the expression of a transitory problem—for example, that of an adolescence not yet superseded. Nevertheless, such tendencies must be clearly overcome at least three years before ordination to the diaconate.”⁸⁵

⁷⁹ Instruction 2005, Introduction.

⁸⁰ Instruction 2005, n. 1. Here the following passage is worth noticing: “The candidate to the ordained ministry, therefore, must reach affective maturity. Such maturity will allow him to relate correctly to both men and women, developing in him a true sense of spiritual fatherhood towards the Church community that will be entrusted to him.”

⁸¹ Instruction 2005, n. 2.

⁸² Instruction 2005, n. 3.

⁸³ Not only the very type of the document—here: Instruction (can. 34 CIC), and in case of *Ratio Fundamentalis*: general executory decree (can. 31 § 1 CIC; cf. *Ratio Fundamentalis* 2016, Conclusion)—but also lack of papal *approbatio specifica* (and only the ordinary papal approval, i.e., *in forma communi*), determine in the first and second case that these directive are of administrative norms character that serves the purpose of applying law.

⁸⁴ Instruction, n. 2; *Ratio Fundamentalis* 2016, n. 199.

⁸⁵ Instruction 2005, n. 2; *Ratio Fundamentalis* 2016, n. 200.

In turn, from the Instruction chapter entitled “Discernment by the Church Concerning the Suitability of Candidates” the authors of *Ratio Fundamentalis* excerpted a sentence, like previously, having an unambiguous character of a directive statement—universal administrative act of the congregation: “If a candidate practices homosexuality or presents deep-seated homosexual tendencies, his spiritual director as well as his confessor have the duty to dissuade him in conscience from proceeding towards ordination.”⁸⁶

Among the mentioned regulations of the subsection of *Ratio Fundamentalis* entitled “Persons with Homosexual Tendencies,” what should be referred to—in every such unveiled case (potentially incorrect personality)—is an *in concreto* establishment of the actuality, based on competent knowledge from the area of psychology (as a rule by experts in the psychological sciences),⁸⁷ using the elementary criteria,⁸⁸ which are: degree of human maturity and mental health of a candidate for seminary/priesthood.⁸⁹ However, an important *in genere* premise in this process of individualized verification is an adequate (!) examination and defining of the very phenomenon of homosexuality. Here—if we were to juxtapose both title categories—it is much more difficult to find scientific depiction that would be free from ideological influences. First of all, influential experts’ circles are not eager to classify homosexuality as well as transsexualism in the area of mental disorders. In the 1960s, there was still a consensus according to which homosexuality was an illness—anomaly, characterized by a lack of adaptation to the heterosexual norms of intercourse adopted in the contemporary civilization (DSM-1, 1952; DSM-2, 1968).⁹⁰ However, already in 1973, due to a strong pressure coming from the homosexual lobby and not without an influence of some research showing that homosexuality is not connected with any mental disorders, it was at first removed from the DSM classification of the American Psychiatric Association (cf. DSM-3, 1980), and subsequently in 1990 from the WHO Classification of Mental and Behavioural Disorders (cf. ICD-10, 1992).

Referring to these circumstances, a valued expert in canon law, psychiatrist Giuseppe Versaldi, recommends consistent perception of the problem of homosexuality—somehow against the stream of the contemporary tendencies—within the optics of Christian anthropology. From this vista, there is no doubt that

⁸⁶ Instruction 2005, n. 3; *Ratio Fundamentalis* 2016, n. 200.

⁸⁷ Guidelines 2008, n. 5–10.

⁸⁸ Obviously, not losing the holistic horizon of truth about the Christian calling and first and foremost about the aim of the formation process of candidates for priesthood. Cf. Gałkowski, “Wiedza psychologiczna,” 53.

⁸⁹ Cf. *Ratio Fundamentalis* 2016, n. 147, 191–196.

⁹⁰ To clarify, the place of homosexuality in the 1969 DSM-2: group—“Sexual deviations” (301–304), category—“Personality disorders and certain other non-psychotic mental disorders” (302). American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Second Edition* (Washington, D.C.: American Psychiatric Publishing, 1968), 302.0: Homosexuality, 44.

homosexuality is an anomaly.⁹¹ Therefore, to spell it out: in the light of Christian personalism (integral anthropology that constitutes a reference point for the legal anthropology criteria)⁹² not only transsexualism, but also homosexuality constitutes a personality disorder and remains invariably a psychosexual disorder.

The exposure of the issue of justness of further classification of homosexuality—as well as transsexualism—among mental disorders does not erase the obvious differences between the two phenomena.⁹³ As it was earlier emphasized, sexual drive in transsexual people is aimed at same sex people (biological); however, this sex determinism is felt to be heterosexual. In other words, when a transsexual establishes contact with a same sex person, then in reality—since he or she feels that he or she belongs to the opposite sex—he or she is looking for a heterosexual bond. The situation is different in case of a homosexuality—he or she accepts his or her biological sex and only feels sexual drive for the same sex people. Then, what should be highlighted, as long as a transsexualism and homosexuality in the external behavior can be similar, this behavior might have a totally different mental background and within the scope of canon law plane should be treated in a diverse way.

Having arrived at these conclusions, it is possible to move to a glance at the title problem “homosexuality and priesthood” through the prism of the binding canonical acts. Already at the very beginning it should be clearly established that the majority of legal remarks that appeared earlier with reference to transsexuals—people similarly afflicted with psychosexual anomalies—remain timely in their full extent. Even the very number of cases of people with the homosexual problem applying for admission to the seminary (definitely bigger than with the transsexualism syndrome) is a signal to approach in more detail the issues of evaluating the premises; “for” or “against” admitting a candidate, “for” or “against” admitting a candidate to holy orders. Especially, due to the post-conciliar standpoint of the church⁹⁴ (sealed by means of the guidelines of the

⁹¹ Giuseppe Versaldi, “Implicazioni psicologiche dell’Istruzione *In continuità* del 4 novembre 2005.” *Periodica de re canonica* 95 (2006): 455.

⁹² John Paul II, Address to the Tribunal of the Roman Rota (January 25, 1988). See also: Nikolaus Schöch, “Criteri per una determinazione giuridica della personalità ‘anormale,’” in *L’incapacità di assumere gli oneri essenziali del matrimonio (can. 1095 n. 3)*, (Studi Giuridici, 48), Città del Vaticano: LEV, 1998, 159–186.

⁹³ Cf. Navarrete, “Transexualismus et ordo canonicus,” 110.

⁹⁴ “At the present time there are those who, basing themselves on observations in the psychological order, have begun to judge indulgently, and even to excuse completely, homosexual relations between certain people. This they do in opposition to the constant teaching of the Magisterium and to the moral sense of the Christian people. A distinction is drawn, and it seems with some reason, between homosexuals whose tendency comes from a false education, from a lack of normal sexual development, from habit, from bad example, or from other similar causes, and *is transitory or at least not incurable*; and homosexuals who are definitively such

2005 Instruction), which suggests that it is possible to ordain a person who managed to deal with his less troublesome problem of a homosexual nature.⁹⁵

Examining a specific case of a candidate afflicted with only a transitory problem of “homosexual tendencies” (according to the words of the Instruction)⁹⁶ and the answer to the question whether these tendencies and the immaturity connected with them were clearly overcome by the candidate (“at least three years before ordination to the diaconate”⁹⁷) has to require significant deliberation and reliability on the side of all people that accompany the formation process with the diocesan bishop, who makes the final decision. These are sufficient reasons to understand the necessity to introduce, in the shape of premises, to the process of reaching the said decision not only anthropological and legal criteria, but also—and in an equal scope!—ecclesiological and legal criteria.

Priesthood is first of all a gift from God for the church, only later a gift for the called person. Indeed, on the one hand, it is not possible not to appreciate the fact that this sacrament in the personal dimension performs a crucial transformation in the ontological sphere of a baptized man (*bonum personae*).⁹⁸ On the other hand, it is worth to explicitly notice that what comes to the foreground is the truth that the sacramental character immanently carries key dimensions of realizing *salus animarum suprema lex*⁹⁹: Christological, ecclesiastical, pastoral, and obviously legal (*bonum commune*).¹⁰⁰ The word of the Instruction from 2005 reflects this interrelation really well: “A vocation is a gift of divine grace, received through the Church, in the Church and for the service of the Church.”¹⁰¹

Taking into consideration the mentioned gift for a called man, it is the very church legislator who issues the clear indication, which concerns admittance to novitiate, which is related with the title matter: “Should the necessity arise,

because of *some kind of innate instinct or a pathological constitution judged to be incurable.*” Sacred Congregation for the Doctrine of the Faith, “*Persona Humana*. Declaration on Certain Questions Concerning Sexual Ethics,” (December 29, 1975), accessed December 28, 2017, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html.

⁹⁵ On the margin let us notice that a different criterion is specified by the doctrine with reference to the capability of a person to enter into matrimony, namely the degree of sexual deviation intensity. Cf. Navarrete, “Transexualismus et ordo canonicus,” 110–111.

⁹⁶ Instruction 2005, n. 2.

⁹⁷ Instruction 2005, n. 2; *Ratio Fundamentalis* 2016, n. 200.

⁹⁸ CIC, can. 1024.

⁹⁹ Cf. CIC, can. 1752.

¹⁰⁰ Andrzej Pastwa, “The Law of the Church—The Law of Freedom,” in *Religious Freedom Today, Ecumeny and Law* 4 (2016): 110–119.

¹⁰¹ Instruction 2005, n. 3. What emphasizes this truth even more comprehensively is the code norm: “By divine institution, the sacrament of orders establishes some among the Christian faithful as sacred ministers through an indelible character which marks them. They are consecrated and designated, each according to his grade, to nourish the people of God, fulfilling in the person of Christ the Head the functions of teaching, sanctifying, and governing.” CIC, can. 1008.

health, character and maturity can be examined also with the help of experts, observing can. 220.”¹⁰² In connection with it—as the specialist in this subject matter Gianfranco Ghirlanda rightly notices—what absolutely should be included in the canon law diagnosis of the issue of homosexuality and priesthood is the context of elementary law norm: protection of own intimacy. “No one is permitted to harm illegitimately the good reputation which a person possesses, nor to injure the right of any person to protect his or her own privacy.”¹⁰³ Even if this clause is not present in the previously mentioned can. 241 (on admitting to seminary), nor in can. 1051, no. 1 (on the verification of virtues required from a candidate for the holy orders), it does not change the fact that—as the Italian canonist emphasizes¹⁰⁴—in admitting/not admitting to seminary (and holy orders as well) of a man with homosexual inclination it is not possible to avoid the meaning of personal individual good protected in can. 220. However, according to the rules of exercising subjective laws included in can. 223 § 1, this individual good should be in agreement with: firstly, the common good of the church, secondly, the rights of others, and finally own duties towards other people.¹⁰⁵

In turn, it means that in a reliable analysis of calling to priesthood and in the objective context in verifying the *abilitas et capacitas* of a candidate to enter a seminary or receive the holy orders, we should not disregard the three elementary canon law criteria:

1. *The common good of the church*—connects the anthropological dimension with the Christological and ecclesiological one and as such implies performing of pastoral service only (!) by a capable person: one who has a transparent sexual identity and sufficient affective maturity, as well as proper interpersonal relations with men and women.
2. *The rights of others*—in the discussed context, right of church communities and individual followers to have ministers capable of performing services of ministers of God’s mysteries (according to the norm of can. 276, n. 1¹⁰⁶).
3. Among the *own duties* of a candidate what comes to the foreground is the duty concerning a candidate’s full cooperation within the project of seminary formation, realized in the essential cooperation with seminary tutors.¹⁰⁷

¹⁰² CIC, can. 642.

¹⁰³ CIC, can. 220.

¹⁰⁴ Ghirlanda, “Aspetti canonici,” 431–435.

¹⁰⁵ CIC, can. 223 § 1: “In exercising their rights, the Christian faithful, both as individuals and gathered together in associations, must take into account the common good of the Church, the rights of others, and their own duties toward others.”

¹⁰⁶ CIC, can. 276 § 1: “In leading their lives, clerics are bound in a special way to pursue holiness since, having been consecrated to God by a new title in the reception of orders, they are dispensers of the mysteries of God in the service of His people.”

¹⁰⁷ PDV, n. 69; *Ratio Fundamentalis* 2016, n. 139; cf. Ghirlanda, “Aspetti canonici,” 436.

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La transsexualité et l'homosexualité face à la prêtrise
Remarques juridico-canoniques concernant les normes
Ratio Fundamentalis Institutionis Sacerdotalis

Résumé

La réflexion scientifique, inspirée de la proclamation du nouveau *Ratio Fundamentalis*, est focalisée autour des questions : 1) admission/ refus d'admettre au séminaire, permission/refus de conférer l'ordination à une personne transsexuelle, 2) admission/ refus d'admettre au séminaire, permission/refus de conférer l'ordination à une personne homosexuelle. Il y a deux objectifs qui accompagnent l'analyse approfondie de ces questions. Premièrement, ce qui est crucial pour l'obtention des résultats crédibles de recherches, c'est l'affirmation des thèses de l'anthropologie adéquate qui exige que la transsexualité et l'homosexualité soient traitées comme les troubles de nature psychosexuelle. Deuxièmement, bien que le contexte plus proche des études indique le fond doctrinal décrit séparément pour chacun des phénomènes ci-mentionnés sous forme de

principes et de directives anthropologico-éthiques et théologico-ecclesiologiques inclus dans de nombreux textes du Magistère de l'Église, c'est surtout l'Instruction de la Congrégation pour l'Éducation catholique, document de sources datant de 2005, qui représente une valeur cognitive inestimable aussi bien par rapport à la transsexualité que l'homosexualité.

Mots-clés: transsexualité, homosexualité, prêtrise, anthropologie adéquate, normes canoniques CIC/1983, *Ratio Fundamentalis Institutionis Sacerdotalis*

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Transsessualità, omosessualità e sacerdozio
Osservazioni giuridico-canoniche riguardanti le norme
Ratio Fundamentalis Institutionis Sacerdotalis

Sommario

La riflessione accademica ispirata dalla pubblicazione della nuova *Ratio Fundamentalis*, è focalizzata intorno alla questione: (1) dell'accettazione/non accettazione al seminario, ammissione/non ammissione all'ordinazione di una persona transessuale, (2) accettazione/non accettazione al seminario, ammissione/non ammissione all'ordinazione di una persona omosessuale. Due premesse accompagnano l'esplorazione dettagliata di tali problematiche. Primo, è fondamentale per l'acquisizione di risultati attendibili della ricerca l'approvazione delle tesi dell'antropologia adeguata che impone di considerare la transessualità e l'omosessualità sotto il comune denominatore dei disturbi psicosessuali. Secondo, benché il contesto più prossimo agli studi definisca lo sfondo dottrinale tracciato separatamente per ciascuno dei fenomeni menzionati sotto forma di principi e linee guida antropologico-etici e teologico-ecclesiologici, contenuti nelle fonti più numerose del Magistero della Chiesa, è soprattutto un documento sorgente a presentare un inestimabile valore cognitivo, sia con riferimento alla transessualità, sia con riferimento all'omosessualità: l'Istruzione della Congregazione per l'Educazione Cattolica del 2005.

Parole chiave: transessualità, omosessualità, sacerdozio, antropologia adeguata, *norme canoniche CIC/1983, Ratio Fundamentalis Institutionis Sacerdotalis*