

# *Practical Guide to Canonical Administrative Procedure in Penal Matters*

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*Abstract: The first part of this guide summarizes some basic concepts and elements of penal canon law. The second illustrates one possible way of proceeding administratively in penal matters. The appendix offers an outline of some possible singular decrees, prior to the procedure of imposing a penalty.*

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1.1.1. *Function of pastoral governance and canonical penalties.* The role of governance of sacred pastors includes the power to impose proportionate sanctions to protect relevant ecclesial values, when required by the common good of the Church. Canon 1311 §1, incorporating an affirmation already present in the former CIC and throughout canonical tradition, proclaims: «The Church has the original and proper right to punish with penal sanctions the faithful who commit crimes».

The qualifications “original” and “proper” indicate here, among other things, that it is not a right received from another human authority, nor from an imitation of legal systems alien to the Church. On the contrary, the aims that legitimize the existence of a penal system provided in every society (cf. CCC, 2266) are also found to be relevant in the Church, if one thinks of the responsibility of the sacred pastors.

They have a duty to ensure the integrity of communion in the faith, in worship and in governance, which are essential elements of the common ecclesial good: that is to say, of the set of conditions necessary to make it possible to carry out the mission of the Church - as well as other values of special human and Christian transcendence, protecting them, even coercively when necessary. Logically, the specific manifestations of this dimension of the pastoral function of governance must always reflect the proper nature of the Church.

1.2. *Power and duty of the sacred pastors.* The coercive power, for its own nature, entails at the same time a duty. Its exercise does not respond, naturally, to a reprehensible desire for revenge; nor does it imply a lack of understanding and mercy; nor does it presuppose the proud and distant attitude on the part of those who are considered unable to fall. On the contrary, it must be carried out with humility and gentleness, with paternal solicitude devoid of all arrogance, with prudent discernment and a keen sense of responsibility.

With regard to this last condition, we must not forget that it is not a juridical faculty of free authority, simply destined to expand the personal juridical sphere of its holder (as would happen with certain privileges, which could be exercised or not: cf., e.g., c. 80 §2), but of a public power which cannot be renounced, belonging to the pastoral office, which is received with all the set of attributions proper to it as a necessary instrument - together with the other resources of pastoral charity - in order to effectively and responsibly fulfill the mission of governance, when certain circumstances arise.

In all penal proceedings, one should always seek primarily to restore justice, that is, to attend to the spiritual and material wounds caused by the crime, eradicating or neutralizing their cause and repairing them, to the extent allowed by the juridical powers of the pastor (undoubtedly, other means can and should be used simultaneously or successively, which accompany and complement, but cannot replace prosecution - except in cases stipulated by the Legislator when this might be the required response). At

the same time, efforts should be made to mend the culpable person and his salvation. Finally, one must also seek the reparation of the scandal - especially avoiding, not only among the faithful - the spread of doubts, ambiguities or confusion about the attitude of the Church with respect to certain behaviors that falsify her truth and hurt her image.

For these reasons, "in the image of a Church that protects the rights of each faithful, and additionally promotes and protects the common good as an indispensable condition for the integral development of the human and Christian person, the penal discipline features positively. Also, the penalty imposed by the ecclesiastical authority (...) should be considered as an instrument of communion, that is, as a means to recover those deficiencies of the individual good and common good that have emerged with anti-ecclesial, criminal and scandalous behaviors of the members of the people of God "(John Paul II, Address to the Roman Rota, 1979).

1.3. *Penal action in the context of pastoral activity.* Canon 1341 establishes that the Ordinary must initiate the process for imposing a penalty "only when he has seen that fraternal correction, reproof or other measures of pastoral solicitude is not enough" to achieve the aims mentioned above. The imposition of sanctions is thus considered a recourse of pastoral solicitude for especially serious situations. In fact, the character of last resort, an extreme recourse that is attributed to penal law in all legal order assumes a specific intensity in canon law, derived from its pastoral character.

However, "it is appropriate to pause to reflect on a misunderstanding, perhaps obvious, but no less harmful, that unfortunately and frequently limits the vision of the pastuality of ecclesial law. This distortion consists of attributing scope and pastoral intentions uniquely to those aspects of moderation and humanity that can relate directly to canonical equity. That is to say, it consists in sustaining that only the exceptions to the laws, the avoidance of recourse to processes and canonical sanctions, and the reduction of juridical formalities really have pastoral importance. In this way, justice and the strict laws are forgotten, and therefore the general rules, processes, sanctions and other typical indications of legality which are always necessary in the Church, are required in the Church for the good of souls and are therefore inherently pastoral realities" (John Paul II, Discourse to the Roman Rota, 1990).

In fact, when situations arise that require by their nature a penal action, it is an indication of the commitment of the Good Shepherd to pursue it with prudent diligence and tempered strength and justice quickened by charity towards God, towards his Church, towards the flock entrusted to him and towards the person with the behavior that is perhaps criminal. The omission of this duty could even constitute a specific offense (cf. c.1389).

However, it is an area that is extremely delicate concerning pastoral responsibility, because it affects both the measures adopted to specific people and for their significance and possible public resonance. This, coupled with the fear of error and for lack of familiarity with the technical elements of canonical penal law in order to act in an adequate way, can in a number of cases foster an insecurity that leads to avoiding recourse to penal measures, even in situations in which the "other means of pastoral solicitude" mentioned in c. 1341 would constitute clearly an insufficient and inadequate response to address and heal the damage caused to the faithful - without excluding the delinquent himself - and to the Church.

The observance of canonical provisions in this matter guarantees to a large extent, those who have received this responsibility, that their action would be upright, effective, proportionate, respectful of the dignity of the faithful and attentive to the value of the ecclesial good to be protected. This brief guide aims to facilitate the interpretation and application of penal law in the cases that require it. To this aim, it offers a synthesis of the main concepts and norms, and seeks to suggest appropriate ways of proceeding to protect, as far as possible, all the good at stake.

## 2. THE DELICT AS NECESSARY PRESUPPOSITION OF THE PENALTY

2.1. *Distinction between sin and delict.* Not every moral (sinful) or juridical violation is properly a delict. Only certain external behaviors with a special negative impact on the life of the Church and the faithful are qualified in law as a delict and punished proportionately, in accordance with the stated purposes (see 1.1 and 1.2). In order for a delict to exist:

- An *external violation* of a law or precept is required (c.1321 §1).
- That this external violation is gravely imputable to its perpetrator or perpetrators (*ibid.*).
- That the violation committed is classified as a delict and punished with a penalty by a juridical norm (cf. c. 1321 §2).

2.2. *External violation of a law or precept* (cf. cc 1315 and 1319, see 2.4). It is understood that a violation is external when it does not consist only of internal acts (thoughts, plans, desires, etc.), which have no juridical relevance, even though they may be morally reprehensible.

- The external violation can be completed or not completed:
- When, with the intention of committing an offense, acts have been carried out that by their very nature are aimed at achieving the offense, but the crime is not completed because of causes beyond the control of the perpetrator; this is a frustrated delict (cf. 1328 §1).
- If the non-completion is due to the fact that the perpetrator did not use the appropriate means to achieve the intended criminal outcome, or that the person voluntarily desisted before reaching that result, this is an attempt to commit a delict (cf. 1328 §2).
- In general, canon law punishes only completed delict.
- Both frustrated delict and attempted delict can be punished with penalties lesser than that established for the completed delict, or with a penance or a penal remedy in its place (see c. 1328, 1339-1340, see 3.3).

2.3. *Grave imputability.* Having “imputability”, in a juridical sense, means that the responsibility for a criminal conduct is formally attributable (i.e., as a delict, not only as material conduct) to its perpetrator (and co-perpetrators and accomplices, as provided for in c. 1329).

2.3.1. *Deliberation and voluntary.* In order for an imputable criminal conduct to be punishable, it is necessary, according to c. 1321 §1, that the imputability is grave. Therefore, it is punishable only if, to the extent that it is possible to determine externally, it can be established that the subject has acted with sufficient deliberation and free will so that the imputability can be classified as grave (in practice, using criteria similar to those used by moral science regarding sin).

- Those who habitually lack the use of reason, even if they have violated a penal norm while seemingly sane, are considered to be incapable of a delict (cfr. c. 1322).

2.3.2. *Intent and fault.* A violation may be imputable by intent, which in the penal sphere means a deliberate intention to infringe upon the norm in question (not necessarily deception, as in other areas of law); or by fault, that is, by omission of due diligence (cf. c.1321 §1).

- The penalty provided by the law for a violation applies only if the conduct was intentional. On the other hand, if the violation is by fault, it must be punished with a penalty lower than that foreseen (cf. c. 1321 §2).

2.3.3. *Circumstances that modify imputability.* The CIC regulates a series of circumstances that changes the imputability: exemptions which do not incur any penalty (cc. 1323 and 1325); mitigating factors which allow for the imposition of minor punishments or substituting them with a penance (cc. 1324-1325); and aggravating factors which increase the penalty (c.1326).

- In addition, particular law may establish other factors that are extenuating, mitigating or aggravating. Penal precept may do the same (*see* 2.4), but only for the specific case to which it refers (cf. c. 1327). These circumstances must be assessed at the time of imposing the penalty (usually not before, so that it could be recorded that the proceeding has been carried out according to the law: *see* 2.3.6; 8.3).

2.3.4. *Extenuating factors and penalties «latae sententiae».* Penalties *latae sententiae* (*see* 3.1.1) are incurred when the requirements established by the law are imposed *ipso facto* on the person who commits the delict, without the need for any procedure for their imposition. However, the perpetrator would not incur these penalties when there is an extinguishing circumstance, as in other penalties, or a simple mitigating factor (cf. c. 1324 §3).

2.3.5. *Assumptions of ignorance that do not excuse.* Canon 1325 explicitly establishes that crass, supine or affected ignorance, among others, are never extinguishing or extenuating circumstances. These are the three types of ignorance that the subject does not overcome either by negligence, disinterest or malice (malicious ignorance is positively required because, in case of overcoming it, the subject could get to know exactly the obligations or prohibitions that he does not want to fulfill and prefers to ignore them).

2.3.6. *Time at which the extenuating and mitigating factors should be assessed.* In general, except for obvious cases which exclude all imputability, it is preferable that these circumstances be assessed in the context of the corresponding penal process or proceedings (*see* 7 and 8) should it be initiated (*see* c. 1718) so that the acquittal or condemnation is carried out with the necessary guarantees.

- During the preliminary investigation (*see* 6) it is sufficient to determine whether the fact is, in principle, imputable; or, to put it in another way (more precisely in practice), if it is not clearly not imputable. It must be kept in mind that if a violation has been committed, the law presumes (unless it proves to the contrary) that it is imputable (cf. c. 1321 § 3), which would allow for criminal prosecution. However, this presumption of imputability does not imply a correlative presumption of fault (*see* 2.3.2), which must be proved in any case within the corresponding process or procedure.

2.3.7. *Cooperation of several subjects in the same delict.* It is possible that, in addition to the principal perpetrator, other persons also participate in various forms and to varying degrees in the commission of a delict. Their involvement and the subsequent criminal consequences must be tried as resulting from the same prosecutions carried out to establish the penal offense of the principal perpetrator of a possible delict (*see* 6-8).

- Although it is a doctrinal distinction not necessarily employed by the CIC in a strict sense, co-perpetrators refer to those who conspire together and jointly carry out the same criminal action; while accomplices are understood as those who, through other forms of cooperation such as commanding, inducing or instigating, make the commission of the delict possible (if the crime could not have been committed *without such cooperation*), simply facilitate it (*covert cooperation*), or hide it, etc.
- The principle stated in this respect in the CIC is that all who cooperate in the commission of the delict with the same intention to commit a violation (although not for the same reasons) are also

imputable or responsible for the same delict. Consequently, these co-perpetrators shall be subject to the penalties provided for by the law or penal precept, if they are expressly named in a law or precept; and if only the principal perpetrator is expressly named, to the same penalties provided for them, or to others of the same or lesser gravity according to the type and degree of their participation (cf. 1329 §1).

- In the case of penalties *latae sententiae* (see 3.1.1), if the co-perpetrators and necessary cooperators cannot receive the same penalty as the principal perpetrator (e.g. because they are laypersons and the prescribed penalty only affects clerics, etc.), they can be punished with other penalties *ferendae sententiae* (cf. c. 1329 §2).

2.4. *Typification: penal law and the penal precept.* Properly speaking, one can only speak of a delict when the offense committed is classified as such and is punishable by a juridical norm (cf. c. 1321 §2), which may be a penal law, universal or particular (c. 1315 ), or a penal precept (c. 1319).

2.4.1. *Penal law.* According to c. 1315 §1, a person who has legislative power can issue penal laws, namely, laws that establish a penalty for a behavior that becomes criminal - becoming object of juridical definition of a delict - from that moment.

- Those with this power to issue penal laws within the limits of their competence: the Roman Pontiff and the Ecumenical Council united with its Head; the diocesan Bishop and his equivalents in law; the particular Council; and the person who has received from the Supreme Legislator a delegation of legislative power (cf. c. 135 §2).

- Both universal law and particular law (cf. cc 7-22) can establish penal behaviors *ex novo*; and also protect by a penalty what is already commanded or prohibited by divine law. Particular penal law (cf. c. 1315 §3) may also establish the same, within the limits of its competence (always taking into account the criteria of cc. 1316-1318):

- Reinforce with a penalty the mandate or prohibition established by a universal law.
- Add penalties to those already established for a delict typified by universal law (although this should not be done without very grave necessity).
- Determine or establish as mandatory a penalty that the universal law has left indeterminate (see c. 1315 §2) or has established as optional (see 3.1.2) or may, however, establish the penalty of dismissal from the clerical state, which is reserved to the assumptions determined by the Universal Legislator (c. 1317).

2.4.2. *Penal precept.* Unlike penal law, which comes from legislative power, penal precept comes from executive power (including cases in which the authority that issues it is also a legislator: e.g., a diocesan bishop).

- Canon 1319, with an indirect expression, attributes competence to issue a penal precept to anyone who can issue precepts in the external forum, in virtue of his power of jurisdiction: that is to say, to the executive authority who, according to the law, has the power and competence to impose upon a person or certain persons, for a particular case, the obligation to do or omit something, whether or not mandated by a prior law (cf. c. 49). That provision shall be penal if, at the same time when imposing or requiring the obligation in question, it also orders (i.e., threatens) with a penalty, always determinate (see 3.1.2), in the case of non-compliance.

2.4.2.1. *Distinction between penal precept and penal decree.* In the current system of canon law, in practice, the penal precept is always singular (cf. especially cc. 35-39; 48-58). However, it should not be confused with the so-called penal decree, since these concern two acts that refer to different and non-interchangeable stages of penal proceedings.

- In fact, the penal decree (cf. cc. 1342, 1353) is the extrajudicial decree that imposes a penalty, at the conclusion of the proceeding indicated in c. 1720 (the administrative route for the imposition of penalties: *see* 7). It is also, as in the case of the penal precept, a singular administrative decree (given by virtue of the executive power); but if the penal precept has, one might say, a function analogous to penal law, the function of the penal decree is analogous to that of the penal sentence.

- So the penal precept establishes or provides (constitutes) the penalty (as a means to strengthen the mandate it imposes); and the penal decree imposes or declares it (once it is proven that there has been a violation of a law or proper precept that established the penalty).

2.4.2.2. *Example of the various moments of the action of the authority.* If a faithful is acting in a behavior that damages the life of the Church, or breaches an obligation already imposed by the law, the competent authority, after weighing the evidence (*see* cc. 1319 §2 and 1317), may require by means of precept that the person does or fulfills something within a specified period, warning him that, if he does not do so, he will incur the penalty established in the same precept (that was not previously foreseen in general by the law, for if it were, the precept would not be properly *penal*: the delict and the corresponding penalty then would not be established by the precept, but by the previous penal law, which the precept would be limited to *insist on*).

- If the indicated period elapses without fulfillment, the offender commits the delict established by the precept and is subject to the penalty established.

- The authority must proceed correctly to impose that penalty, which is not generally “automatic” (i.e., not already imposed by the mere act of disobeying the precept). Normally, the procedure for the imposition of administrative penalties must be followed (cf. c.1720, *see* 7), abbreviating or omitting all those steps that may be unnecessarily redundant, depending on the nature of the case and taking into account the juridical procedures already carried out. In any case, the right of defense of the offender must be carefully guaranteed. The procedure will conclude with a new decree issued under c. 1720 §2 which imposes the penalty.

- The offender would only incur the penalty “automatically”, thus rendering the procedure for its imposition unnecessary, when the penal provision had provided for a *latae sententiae* penalty (*see* 3.1.1), something which should not be done unless it has to do with grave delicts (*see* 2.3.2) that are especially scandalous and difficult (cf. c. 1319 §2 and 1318). If this were the case, canonical doctrine already considered at the time of the 1917 Code that the precept itself would be equivalent to the previous warning which is necessary to validly impose a censure (cf. c. 1347) for that which the offender was legitimately threatened with a *latae sententiae* censure by precept and which would be subject to the penalty from the moment when the non-compliance occurred (*see* 3.1; 3.2).

2.4.2.3. *Scope and juridical limitations of the penal precept.* According to current law, the penal precept:

- Cannot *impose* or *apply* any penalty for past actions, but only *threaten* with it, that is, to establish in a singular case that a certain *future* violation will be punished with a penalty.

- Cannot perform normative functions of a general and abstract nature permitted by c. 1315 §3 to particular penal law.

- Cannot establish the penalty of dismissal from the clerical state that c. 1317 reserves to universal law (*see* 3.2.2.4).

- Cannot established perpetual expiatory punishments (cf. 1319 §1; 1314 §1, 2<sup>o</sup>, *see* 3.2).

- Cannot establish indeterminate penalties (cf. cc 1319 §1; 1315 § 2; *see* 3.1.2).

- Can establish censures (c. 1312 § 1, 1<sup>o</sup>), both *ferendae sententiae* and *latae sententiae* (cf. cc 1319 §2 and 1318; 1314; see 3.1), but this should not be done if it is not for the most serious delicts and conforming to c. 1318.

- Can established *expiatory* punishments (see 3.2) also *latae sententiae* for delicts with the characteristics described by c. 1318.

### 3. TYPES OF PENALTIES PROVIDED FOR BY THE *CIC*

3.1. *Previous distinctions.* In the norms on penalties, the *CIC* refers, explicitly or implicitly, to certain concepts and distinctions, some already mentioned, that need to be understood in order to interpret and apply these provisions correctly.

#### 3.1.1. Penalties “*ferendae sententiae*” and “*latae sententiae*”

- According to c. 1314, the penalty for a delict is usually *ferendae sententiae*; that is to say, when the delict established by a law or by a precept is committed; a penal process must be initiated to impose the penalty by means of a judicial decision (cf. cc. 1721 ss.), or the administrative procedure (cf. c.1720) in order to impose it by means of a penal decree (see 2.4.2.1).

- However, in very serious cases and always expressly (cf. cc. 1314; 1318), the law or the precept establishing it (see 2.4) may provide that the penalty be *latae sententiae*. In these cases the law itself applies the penalty *ipso facto* - without the need to impose it through a decision, because it is already given (*lata*) by the norm - as soon as the violation occurs, always with the other requirements established by the law (cf. cc. 1321; 1324 §3).

#### 3.1.2. *Indeterminate penalties and facultative penalties:*

- A penalty is called indeterminate (cf. c 1315 §2) when the penal law, in establishing a delict, establishes (using the formula “*iusta poena puniatur*”, or similar ones) that such conduct will be punished, but does not specify - or does so only to a certain extent, i.e., saying what kind of penalty would be appropriate. Therefore, if the particular law has not previously determined (in general) a penalty that the universal law establishes as indeterminate (cf. c. 1315 §3), the judge or superior must determine it in the sentence or decree by which the penalty is imposed for that delict (always following the indications of the norm that establishes it and the general norms of the *CIC*).

- The penal precept, as indicated above, cannot threaten a delict with an indeterminate penalty (cf. c.1919 §1).

- A penalty is *facultative* (cf. c 1315 §3), if the law that establishes the delict does not use a *preceptive* but discretionary expression (i.e. “*puniri potest*”, instead of “*puniatur*” or “*puniri debet*”, etc.) which gives the competent authority the power to decide, by law, whether or not to impose the penalty after a prudent assessment of the circumstances of the case.

3.2. *Censures and expiatory penalties.* The penalties provided by canon law belong to one of these two types (cf. c 1312 §1).

- *Censures* are also called medicinal penalties, because they tend in a peculiar way to the offender's amendment (not excluding, of course, the other purposes of the penalty: see 1.2), which is clearly manifested in its structure and in its juridical regimen.

- *Expiatory penalties*, on the other hand, are not necessarily less grave, nor do they fail to pursue all the general purposes of canonical penal law, but do not have the structural bond with the offender's amendment that characterizes the censures.

3.2.1. *Censures in general.* The censures are: *suspension* (which can be imposed only on clerics), *interdict* and *excommunication*. These penalties have some common characteristics:

- They can only be imposed on contumacious offenders (those who persist in their attitude and reject the means that are provided to obtain their amendment).
- As a consequence of the above, the imposition of a censure is invalid if the offender has not been previously admonished at least once to cease his contumacy, giving him a reasonable time to amend (cf. c. 1347 §1). This warning beforehand is not necessary in the case of a *latae sententiae* censure (see 3.1.1), nor when the censure has been threatened by a penal precept (see 2.4.2).
- The assumption of this warning is different from that foreseen in c. 1339 §1 where there is a warning, as a *penal remedy* (see 3.2.3), to a person who is in the proximate occasion of committing a delict or to one who is suspected of having committed a delict; here the warning is given to those who have *already and certainly committed the delict*, to try to make him repent and rectify without the need to impose the censure and, at the same time, as a prerequisite for validly imposing it if necessary. However, the indications of c. 1339 §§ 1 and 3 on how to make the warning and to formally record it serve as useful guidance.
- Censures cannot be *perpetual*, the offender has the right to be absolved (in a juridical sense) when he abandons the contumacy (cf. cc 1358 §1; 1347 §2).
- Censures *latae sententiae* are not exactly automatic, since it is required, as always, that the corresponding delicts are gravely imputable, an extreme that the law reinforces with specific requirements (see 2.3.4). For this reason, although it is possible to state abstractly that whoever commits such a violation incurs such a censure *latae sententiae* instead of stating whether a particular offender has actually incurred the penalty, many times it is necessary to be able to state it officially, e.g., in order to repair the scandal caused by public or notorious conduct. In these cases, it is necessary to verify what is really the penal situation of the person and to *declare* it, after a judicial process or an administrative procedure. The same steps as for the imposition of the penalties *ferendae sententiae* should be fundamentally followed (cf. c 1341, see 7).
- The juridical act of declaration (sentence or decree) does not impose the penalty *latae sententiae* which, as we have seen, would already be imposed by law, if applicable: it has only declarative effects. However, the fact that a censure is declared or not has significant juridical consequences with respect to the effects (cf. cc. 1331 §2; 1332 §3), the obligatory nature of the penalty (cf. cc. 1335 and 1352 §2) and its remission (cf. cc. 1355-1357).

3.2.1.1. *Excommunication.* This is the gravest censure. The offender incurring excommunication is affected by extensive prohibitions in essential aspects of full ecclesiastical communion: he cannot celebrate sacraments or sacramental; cannot receive the sacraments; cannot actively participate in worship celebrations; cannot perform offices, ministries or ecclesiastical duties, and cannot lawfully perform acts involving the power of jurisdiction (cf. c.1331 §1).

- If the excommunication is imposed or declared (see 3.2.1), by a sentence or penal decree, the prohibitions provided for in c. 1331 §2, which are not given in cases of non-declared excommunication *latae sententiae*, are also added to these general effects.

3.2.1.2. *Interdict.* Although this censure does not directly affect the juridical communion of the offender with the Church, nor does it prevent him from exercising other functions, it bears the same prohibitions as excommunication (cf. c. 1332 §1) regarding the sacraments (celebration and reception, sacramentals and acts of worship (with the same effect also if it is declared: cf. c 1332 §4), unless the law or the penal precept determines some of its effects otherwise (see c. 1332 §2).



- It seems technically difficult to impose penalties, with the requirements of canon law, to a juridic person (cf. c. 115), including that of interdict, because, as a collective or patrimonial subject, the juridic person cannot properly commit a crime, since, for example, it would be impossible to evaluate unitarily the necessary requirements of imputability (*see* 2.3) and contumacy (*see* 3.2.1), etc. Outside the strictly penal sphere, there are other possible actions in the exercise of the duty of vigilance of the competent authority on the life and activity of juridical persons: cf. cc. 120, 305, 318, 320, 326, etc.
- On the other hand, individuals may incur a penalty for activities directly related to juridical persons (cf. c. 1332 §4), above all for penal actions carried out as part of their governing bodies or representatives. It could also be penal to belong or register in a particular association (apart from the general assumption provided by c. 1374), for example, after the competent Ordinary had given a legitimate penal precept to prohibit it for grave causes.

3.2.1.3. *Suspension*. This censure, which affects only clerics, prohibits either all or some acts, within certain limits (cf. c. 1333 §3) of the power of orders, the power of governance (including the penalty of invalidity of the act, if the law or the precept establish as such) (cf. c. 1333 § 2) or the rights and functions proper to one's office (cf. c. 1333 § 1), such as the reception of certain goods (cf. c. 1333 § 4).

- The law or precept can determine the scope of the suspension for specific delicts, under c. 1334.
- Only universal or particular law - not precept - can establish a penalty of suspension *latae sententiae* without determining its extent (within the limits provided in c. 1333). In this case, it will be understood that the effects of the suspension are all those indicated in c. 1333 § 1 (cf. c. 1334).
- Where that *latae sententiae* suspension is established, instead, by penal precept (cf. c. 1334 § 1), its extent must always be determined (it could cover everything provided for in c. 1333 §1, but must be explicitly determined (cf. c. 1334 §2) and cannot be established with a generic expression in the law.
- The sentence or the penal decree may also determine the extent of the suspension *ferendae sententiae* in applying it (cf. c. 1334 §1).

3.2.2. *Expiatory penalties*. These consist in the privation of some spiritual or temporal good legitimately imposed on a faithful (in the form of obligation, prohibition, deprivation, disqualification, expulsion, etc.), always in a manner consistent with the supernatural end of the Church (cf. c. 1312 §2).

- They can only affect goods (cf. c. 1338 §1) - faculties, rights, powers, abilities, etc. - that are subject to the power of the authority who establishes the penalty (i.e., the one who *foresees* it, which may not be the same as the one who *imposes* it).
- Unlike censures, expiatory penalties can be *perpetual* or imposed *for a time*, determinate or indeterminate (cf. c. 1336 §1).
- The *CIC* offers a list of possible expiatory penalties, among others that could be established (cf. c. 1312 §2).
- Only the prohibitions mentioned in c. 1336 §1, 3° may be *latae sententiae* (cf. c. 1336 §2), not the other expiatory penalties.

3.2.3. *The expiatory penalty of dismissal from the clerical state*. The *dimissio e statu clericali* (cf. c. 290,2°) is always, by its very nature, a *perpetual expiatory penalty*. As has already been pointed out, it cannot be instituted by particular law or by precept (cf. c. 1317). It is reserved to universal law (nor can it be chosen, at the moment of imposition of the penalty, in cases in which the law establishes an *indeterminate* penalty for a delict: *see* 3.1.2 and 8.4.3).

- The legislator does not establish the obligation to impose this penalty as the first and only possibility for any of the delicts established in the *CIC*. On the contrary, he always constitutes it as the upper end of a scale that gradually increases the penal action, allowing it to reach the *dimissio* in the most serious cases. The canons that cover foreseen cases use expressions such as: "*non exclusa dimissione e statu clericali*", "*puniri potest dimissione e statu clericali*", "*in casibus gravioribus dimittatur e statu clericali*", "*gradatim privationibus ac vel etiam dimissione e statu clericali puniri debet*", "*aliae poenae gradatim addi possunt adquest ad dimissionem et statu clericali*" (cf. cc. 1364 §2, 1370 §1, 1394 §1, 1395 §§1-3).
- This way of legislating, which is logical, given the nature of the penalty, requires both prudence and strength at the moment of assessing the circumstances of the specific case to impose it.

3.3. *Penal remedies and penances.* In addition to penal sanctions, c. 1312 §3 provides for the use of penal remedies (warning, rebuke), above all to prevent delicts; and penances, to increase a penalty or to replace it in certain cases. The decision to apply a penal remedy or a penance must be adopted by decree (cf. § 1342 §1).

3.3.1. *Penal remedies in general.* The warning (cf. c. 1339 §1) and the rebuke (cf. c. 1339 §2) are the competence of the Ordinary, who can designate another person to carry them out.

- The warning as well as the rebuke in question here, in addition to measures of pastoral solicitude, are *formal* acts which can acquire juridical relevance in different cases and for this reason must always be documented (cf. c. 1339 §3), without necessarily having to be public. The formal character distinguishes these two penal remedies from other admonitions or indications that the Ordinary could do to the faithful, clerics or not, about his conduct in any matter, without any special record of them. In addition, penal remedies always refer to situations more or less close to criminal behavior.
- The *CIC* does not specify the procedure to be followed to satisfy the requirement that there be some documentary evidence of these penal remedies; thus there can be several possibilities.
- For example, the Ordinary, or the person designated by him, may summon the person concerned and give him the text of the warning or rebuke to be read in his presence. Once it is read and the necessary terms are clarified, they both must sign it, indicating the date. If it is anticipated that this procedure may present difficulties (e.g. because the person refuses to sign), or if it is to be done orally, an action of some notary would be necessary, in addition to the Ordinary or the person designated by him, to lend faith to what was acted upon. The document should be kept in the secret archive of the curia (cf. c. 489).

3.3.1.1. *The warning.* This is indicated, firstly, as a preventive measure in cases where someone is in a proximate occasion of committing a delict (cf. c. 1339 §1).

- The Ordinary must assess prudently (with criteria analogous to employed in morality) if a behavior can be qualified as a proximate occasion of committing a delict. It is not necessary, however, to carry out a special investigation for it, since this does not involve a penalty: it would be sufficient to have the prudent provision that a particular conduct, if not rectified, could end up leading to some delict, i.e.; against the faith, or against specific obligations of an office. In fact, the effectiveness of this remedy will depend on whether it is used in time and with diligence when there is reasonable cause, without risking that the delict was committed for fear of making a mistake or for a disproportionate anxiety of certainty.
- Canon 1339 §1 provides that warning may also be used in other cases where, once the preliminary investigation of a possible delict has concluded (cf. c.1717, *see* 6), the Ordinary, according to c.

1718 §1, 1°, considers that it is not possible to go ahead with a process or an administrative proceeding for the imposition of the penalty (i.e., because he anticipates that it would not be possible to prove the delict and the accused would have to be acquitted), but nevertheless has the *serious suspicion* that the investigated may have committed a delict. In these cases, the formal warning has the function of stopping a possible criminal conduct, or avoiding that it happen again.

3.3.1.2. *The rebuke.* Canon 1339 §2 provides rebuke or correction for cases in which the conduct of someone causes scandal or serious disturbance of order.

- Since the correction must be appropriate to the characteristics of the person and of the fact, when an external conduct is involved which, without being delictual, causes scandal, the Ordinary must consider if it is opportune to counteract with giving a proportionate publicity to the fact of correction or even to its content or any of its terms, in addition to leaving the documentary acts as indicated (*see* 3.3.1).

- Nothing prevents that both correction and warning be employed - even in the same act, but always distinguishing these two penal remedies in the document in which they are communicated, since the same conduct of a person may include aspects that have already passed that necessitated the first as well as other future or ignored aspects (the proximate occasion of committing a delict if not rectified, or the above-described suspicion: *see* 3.3.1.1) that appropriately necessitate the second according to law.

3.3.2. *Possible use of a penal precept as a penal remedy.* If the warning and corrections made to someone, even repeatedly, have been ineffective and it is foreseeable that they will continue being so, the Ordinary could issue a penal precept (*see* 2.4.2), in which he should stipulate in detail what the person concerned has to do or avoid doing, and establishes at the same time the penalty that he will incur in case of disobedience.

If any of the behaviors to be avoided or corrected are already typified as a delict under the law, the penal precept shall be limited to spell out the provision in that respect (determining, if it is the case, the penalty undetermined by the law). On the other hand, for other scandalous behaviors, or those that may constitute a proximate occasion of committing a delict, etc., but not previously classified as a delict, the penal precept may establish penalties, always determinate (*see* 3.1.2). The same precept can refer to various behaviors, recalling for some the penal consequences already provided for by the law and establishing for others the consequences that may be incurred upon the interested party if he does not obey the precept concerning them.

3.3.3. *Penances.* According to canon 1340 §1, these consist of a mandate to perform some work of charity, piety or religion (e.g., alms, a time of retreat, a certain reading, a few prayers, etc.).

- They can be imposed in the external forum (that is to say, on the margin of the sacrament of penance as in an internal sacramental forum, and in other cases involving the non-public exercise of the power of governance (cf. c. 130), unless they are for occult transgressions (cf. c. 1340 §2) that are neither public nor notorious.

- For occult transgressions, penances can only be imposed in the internal (sacramental or not), since otherwise it would run the risk of defaming the person concerned (this does not mean that the acts required to be performed must be *internal* or hidden, but the imposition of penance - that is, the reason why the subject is going to perform these acts - is not done with the publicity that acts of authority usually have, according to the nature of each one).

- Penances can be added to penal remedies, according to canon 1340 §3.

- They can be used to substitute a penalty in cases provided by the law, when, that penalty is considered unnecessary or disproportionate due to the circumstances involved and the dispositions of the offender (cf. cc. 1343, 1344, 2°, 1348).
- In some cases, they may be added to a penalty (cf. c. 1312 §3), i.e., with the intention of strengthening its effectiveness to seek the amendment of the offender, or also to aggravate it when, taking into account the circumstances, the penalty provided by the law is in some way insufficient or less effective.
- Lastly, they can be imposed upon remitting a censure (cf. c. 1358).

#### 4. MAIN DELICTS TYPIFIED IN CANON LAW

4.1. *Goods protected by penal law.* The delicts that canon law typifies, while envisaging the penalties for each of them, are grouped around certain ecclesial values that the legislator wants to protect especially, because they are of great importance for the existence and mission of the Church. Specifically, those that the *CIC* typifies in cc. 1364 ss. focus on the three areas in which communion is juridically expressed (cf. c. 205) and on some fundamental aspects of human and Christian dignity. The so-called *delicta graviora*, which include the most serious delicts against the faith and committed against morality or in the celebration of the sacraments, are reserved for the Congregation for the Doctrine of the Faith and are typified in part by the *CIC* and in part by the *Motu proprio Sacramentorum Sanctitatis Tutela [SST]*, to which it shall be referred when appropriate.

- This guide simply enumerates, by way of a list, the main delicts identified, indicating which are reserved to the Holy See and in what aspect, since what is reserved is, on the one hand, the competence to know judicially or administratively how to punish the delict (or declare it, if it is punished with a penalty *latae sententiae*: see 3.2.1); and on the other hand, the competence to remit or lift the sentence already imposed according to law (“reserved censures”, cf. c. 1354 §3).
- For the detailed discernment of the specific assumptions - the delictual types, as will be said, are subject to strict interpretation and cannot be extended by analogy: see 7.1 -, and will reference the most common commentaries on the corresponding canons and the manuals cited in the brief bibliography included at the end of this guide.

4.2. Delicts established in the *CIC* and in the *SST*. To structure the list minimally, the categories with which the *CIC* groups the delicts will be used, adding in each group, if applicable, the delicts or specialties that the *SST* adds.

##### 4.2.1. *Delicts against religion and the unity of the Church:*

- Apostasy, heresy and schism (cf. cc. 756 and 1364, *SST*, article 2).
- Forbidden *communicatio in sacris* (cf. cc. 844 and 1365). Conviction of the delict of concelebrating with ministers of ecclesial communities who do not have the apostolic succession or recognize the sacramentality of the priesthood is reserved to the CDF (see *SST*, article 3 § 1, 4).
- Allowing children to be baptized or educated in a non-Catholic religion (cf. c. 1666).
- Profanation of consecrated species, consisting of throwing them to the ground deliberately and with grave contempt or taking them or holding them for a sacrilegious purpose (cf. c. 1367). The knowledge of these delicts is reserved to the CDF (see *SST*, article 3 § 1, 1). The M.p. also typifies the delict of consecrating a species or both outside the Mass with a sacrilegious purpose

(cf. SST, article 3 § 2). The declaration and the remission of the corresponding censure of excommunication *latae sententiae* are reserved to the Apostolic See.

- Perjury before the ecclesiastical authority (cf. c. 1368).
- Using a show, a public meeting or a means of communication to blaspheme, to seriously attack good morals, to insult religion or the Church, or to arouse hatred or contempt against them (cf. c. 1369).

#### 4.2.2. *Delicts against ecclesiastical authorities and against the freedom of the Church:*

- Attack against the Roman Pontiff. Remission of the censure of excommunication *latae sententiae* is reserved to the Apostolic See (cf. c.1370 § 1).
- Attack against a Bishop (cf. c.1370 § 2). “Physical violence against a cleric or against a religious or a religious, in contempt of faith, of the Church, of ecclesiastical power or of the ministry” (cf. c. 1370 § 3).
- Stubborn teaching of a doctrine condemned by the Roman Pontiff or by an Ecumenical Council (cf. c. 1371, 1°).
- Obstinate rejection of a doctrine definitively proposed by the Roman Pontiff or by the College of Bishops on faith and customs, without retracting after having been admonished by the Apostolic See or by the Ordinary (cf. c. 1371, 1°).
- Disobedience to the legitimate mandate or prohibition of the Apostolic See, of the Ordinary or of the Superior, which persists after the subject has been admonished (cf. c. 1371, 2°).
- Making recourse to the Ecumenical Council or to the College of Bishops against an act of the Roman Pontiff (cf. c.1372).
- Publicly inciting among subjects animosities or hatred against the Apostolic See or an Ordinary because of some act of power or ecclesiastical ministry, or provoking disobedience against them (cf. c. 1373).
- Joining an association that works against the Church (cf. c. 1374).
- Promotion or direction of an association that works against the Church (cf. c. 1374).
- Impeding the free exercise of the ministry, of an election or of ecclesiastical power (cf. c. 1375).
- Impeding the legitimate use of ecclesiastical goods (cf. c. 1375).
- Intimidating an elector, one elected, or one who exercise ecclesiastical power or ministry (cf. c. 1375).
- Profanation of a sacred object, movable or immovable (cf. cc. 1171 & 1376).
- Alienating ecclesiastical goods without the permission prescribed by the law (cf. cc. 1257, 1291 ss and 1377).

#### 4.2.3. *Usurpation of ecclesiastical functions and delicts in its exercise:*

- Attempting the celebration of the Eucharist without being a priest. Conviction of this delict is reserved to the CDF (cf. c. 1378 §2, 1°; SST, art. 3 §1, 2°).
- Simulation of the Eucharistic celebration. Conviction of this delict is reserved to the CDF (cf. c. 1379; SST, art. 3 §1, 3°).
- Absolving an accomplice in the sin against the sixth commandment. Conviction of this delict is reserved to the CDF; and the remission of the censure of excommunication *latae sententiae* is reserved to the Apostolic See (cf. c. 1378 §1; SST, art. 4 § 1).
- Attempting to give sacramental absolution or simply listening to a sacramental confession without being able to celebrate it validly. Conviction of this delict is reserved to the CDF (cf. c. 1378 §2, 2°; SST, art. 4 §1, 2°).

- Simulation of the sacramental absolution. Conviction of this delict is reserved to the CDF (cf. c. 1379; *SST*, art. 4 §1, 3°).
- Solicitation of a confessor to a penitent during the confession, on the occasion, or under the pretext of it to solicit him or her to commit a sin against the sixth commandment (cf. c. 1387). If the solicitation is to commit a sin with the confessor himself, the conviction of the delict is reserved to the CDF (cf. *SST*, art. 4 §1, 4°).
- Direct or indirect violation of the sacramental seal by the confessor (cf. c. 1388 §1). Conviction of both of these delicts is reserved to the CDF; the penalty of the first is the censure of excommunication *latae sententiae* reserved to the Apostolic See (cf. *SST*, art. 4 §1, 5°).
- Violation of the secret of the confession by the interpreter and by those who, in some other way, have knowledge of the sins from the confession (cf. c. 1388 §2).
- Recording by some technical means or revealing with malice, through the means of communication, the words of the confessor or of the penitent, whether a true or feigned confession, of oneself or of another person. Conviction of this delict is reserved to the CDF (cf. c. 1388; *SST*, art. 4 §2).
- Simulation of the administration of a sacrament of another mean not specifically typified (cf. c. 1379).
- Celebration or reception of a sacrament with simony (cf. c. 1380).
- Usurpation of an ecclesiastical office or illegitimate retention of the office after its privation or cessation (cf. c. 1381).
- Episcopal consecration (active or passive) without papal mandate. Remission of the censure excommunication *latae sententiae* incurred by this delict is reserved to the Apostolic See (cf. c. 1382).
- Ordaining without legitimate dimissorial letters someone who is not his subject, and receiving the ordination in these circumstances (cf. cc. 1015 & 1383).
- Attempting to ordain a woman. Conviction of this delict is reserved to the CDF. Remission of the censure of excommunication *latae sententiae* incurred by those who commit it is also reserved to the Apostolic See (cf. *SST*, art. 5).
- Illegitimate exercise of a priestly function or of another sacred ministry, by some mean not specifically typified (cf. c. 1384).
- Illegitimately making a profit with the stipends of the Mass (cf. c. 1385).
- Bribery of those who exercise a function in the Church, with promises or offerings, so that he will do or omit something illegitimately (cf. c. 1386).
- Accepting the indicated bribes in the first place (cf. c. 1386).
- Abuse of an ecclesiastical power or function (cf. c. 1389 §1).
- Illegitimate realization or omission and with the external harm of an act of ecclesiastical power, function or ministry due to culpable negligence (cfr 1389 § 2).

#### 4.2.4. Crimes of Falsehood:

- False denunciation before the ecclesiastical authority of a confessor for the crime of solicitation in confession (cf. c. 1390 § 1).
- Slandorous denunciation of a member of the faithful before the ecclesiastical superior for a crime (cf. c. 1390 § 2).
- Injury to the good reputation of someone before the ecclesiastical superior (cf. c. 1390 § 2).
- Falsification of an ecclesiastical public document and alteration, destruction or concealment of a true one (cf. c. 1391, 1°).

- The use in the ecclesiastical forum of a document (ecclesiastical or not) false or altered (cf. c. 1391, 2°).
- Affirmation of a falsehood in an ecclesiastical public document (cf. c. 1391, 3°).

#### *4.2.5. Crimes against special obligations:*

- Illegitimate exercise of commerce or business by clergy and religious (cf. c. 1392).
- Breach of the law legitimately imposed (cf. c. 1393).
- Attempt to marry, even only civilly, by a clergyman or a perpetually professed religious (cf. cc. 1087, 1088, 1394).
- Concubinage of a cleric, or permanence with scandal in another external sin against the sixth commandment (cf. c. 1395 § 1).
- Any other external sin against the sixth commandment - in its case, with a person over 18 years of age - that a cleric commits with violence or threats or publicly (cf. c. 1395 § 2).
- External sin against the sixth commandment committed by a cleric with a person under 18 years of age or with a person who habitually has an imperfect use of reason. The knowledge of this crime is reserved to the CDF (cf. c. 1395 § 2, SST, article 6 § 1, 1°, which modifies as regards the minor's age c. 1395).
- Acquisition, retention or disclosure, in any form and with any instrument, by a cleric, with lustful purpose, of pornographic images of minors under 14 years of age. The knowledge of this crime is reserved to the CDF (Cf. SST, Article 6 § 1, 2°).
- Serious non-fulfillment of the law of residence to which someone is bound by his ecclesiastical office (cf. c. 1396).

#### *4.2.6. Crimes against the life and freedom of man:*

- Homicide (cf. c. 1397).
- Kidnapping or retention of someone with violence or deception (cf. c. 1397).
- Mutilation or serious injuries (cf. c. 1397).
- Completed abortion (cf. cc. 1329 and 1398).

## II. PROCESS

### 5. THE NOTICE OF A POSSIBLE CRIME, BEGINNING OF THE ACTIONS

5.1. *News of a possible crime and reaction of the Ordinary.* In accordance with c. 1717 §1, the Ordinary must react "always" actively when he has news, at least credible, of a possible crime.

- The concept of «news» includes the knowledge obtained by any channel: direct (by own knowledge); or indirect: denunciation, complaint or report from a faithful person; press information; fame or *vox populi*, etc.

- The obligation is not limited to cases in which an effective and certainly committed crime is known, but refers to any news of a possible crime, of conduct that could be criminal, if the news responds to the truth.

- The active reaction of the Ordinary in those cases consists, first of all, in assessing the likelihood of the news to open a preliminary investigation (*see* 6), if necessary. It would prove imprudent and unjust - and that is why it is prohibited by canon law - both to act unlawfully and immediately in response to any news, and to inhibit oneself without assessing it.

5.2. *Valuation of the verisimilitude of the news.* In order to open up the preliminary investigation, a decree must arise (*see* c.1717 §1, *see* Annex, 1 and 3). It is not required that the Ordinary reach the same *certainty* that would be necessary to impose a penalty (cf. c. 1720, 3°). It is enough that the news presents elements that make it credible: i.e., possible facts, reliable sources, credible stories, coincidence of times and places, congruence with news or less concrete previous indications, etc.

-In practice, the Ordinary must investigate, at least briefly, as long as the news is not clearly false or totally implausible (*see* 5.4.1, Annex, 1 and 2) and refers to facts that have actually happened and would constitute a *crime* (*see* 2.1) or at least could be prudently considered a "close occasion to commit a crime" (cf. c. 1339 § 1).

5.3. *Treatment of a possible anonymous report.* At this stage of the action, it is not yet a question of initiating a criminal procedure (*see* 7), but only of deciding whether to investigate. Therefore, a plausible news from an *anonymous* report could provide a sufficient basis to launch a cautious and prudent investigation.

-However, if it were decided later to initiate the proper criminal action, that decision (and, logically, the imposition of the sentence, in its case) could not be based on the anonymous complaint alone, but would need to be supported by sufficient data and evidence, obtained in the investigation.

5.4. *Cases in which the investigation is superfluous.* The Ordinary can legitimately abstain from carrying out the investigation when "it seems wholly superfluous" (c.1717 §1). This can happen, especially in the cases indicated below.

5.4.1. *Unlikely or certainly false news.* When the news is clearly improbable or the Ordinary knows with certainty (from objective data that he knows certainly, not only based on his subjective opinion) that the news of the crime which reached him has not been committed.

- In this case, the Ordinary should not simply be inhibited, but should formally *take the decision not to investigate* (*see* Annex, 1 and 2). To do this, it is advisable that a special



decree be issued (cf. c. 48 ff.) To formalize that decision, express its motives (it is not enough to say that the news is implausible or false, it is necessary to explain, at least synthetically, why he makes that assessment: *see* c. 51) and order the filing of the proceedings related to that news of a possible crime. The decree will be filed in the secret file (*see* c.1719).

- This procedure is appropriate, not only because c. 1717 § 1 says literally: "decernat" (ie: "decree"), but also because in this way there will be documentary evidence that the investigation is not omitted through negligence or leniency of the ecclesiastical authority, but by virtue of an explicit and motivated decision, adopted after assessing in conscience and according to law the news of a possible crime.

- On the other hand, in these cases, the authority must also assess the need or opportunity to rectify, with more or less publicity depending on the circumstances, the erroneous or slanderous news that could damage the fame of the people affected and give suspicion with regard to the attitude of the Church about the alleged criminal behavior (eg, speaking personally with the person who has falsely or erroneously reported, publishing a note or statement if the news has been publicly disclosed, sending a note to read at the Sunday Mass in the parish where the rumor took place, etc.).

5.4.2. *Existence of sufficient elements to proceed immediately.* The investigation will also be superfluous when the Ordinary, upon receiving the criminal report, considers that there are sufficient elements to initiate, without prior investigation, a criminal procedure or proceeding (in no case could a penalty be directly and immediately be imposed at this time).

- In this case, a special decree will be issued (*see* Annex 5), which must express two different decisions: first, to omit the preliminary investigation, with an explanation of the reasons why it is considered superfluous. (Cf. cc. 48, 51, 1717 § 1); and second, as prescribed by c. 1718, to immediately initiate an administrative procedure or a criminal judicial process for the imposition (or declaration: 3.2.1) of the penalty (*see* 7).

## 6. PRELIMINARY INVESTIGATION

6.1. *Beginning of the investigation by decree.* If the Ordinary considers the news of the possible crime is admissible and decides to open the preliminary investigation, he must formalize that decision in a singular decree (*see* cc. 48 ss., 1719; *see* Annex, 3).

- This decree will also contain, in this case, the appointment of an investigator to whom those steps are entrusted, if the Ordinary does not carry them out personally (*see* 6.3), the exact terms of the mandate granted to him (in any case cf. c.138) and the legitimate provisional measures (*see* 6.2) that seem prudent and discrete, if he considers it appropriate to adopt some of them while it is being investigated.

6.2. *Possible provisional measures during the investigation.* C. 1722 provides for the possibility of adopting precautionary measures, with the conditions established there, only against those formally *accused*, and therefore only when it has already been decided to *initiate the process* (or the administrative procedure) to impose or declare the penalty. It does not authorize, on the other hand, the adoption, under its protection, those measures against the investigator during the investigation, which in any case the provisions of c. 1717 § 2 must always keep in mind. Only in

the offenses reserved to the CDF (*see* 6.9), art. 19 of m.p. *Sacramentorum Sanctitatis Tutela* makes it possible to take the measures of c. 1722 already from the opening of the preliminary investigation.

- However, if circumstances make it advisable (eg, *a priori* because the news seems plausible and it is a matter of special gravity, or because it is estimated that there could be anxiety among the faithful because they have denounced before the authority and do not see that anything happens, or also because of the investigation itself, which can defame those being investigated, or if there is a risk of recidivism, or loss or destruction of possible evidence, etc.), nothing prevents the Ordinary (without the need to publicly link his decision with that of initiating the preliminary investigation, which will not be public normally) from taking discreetly some measures that are not the mandates or prohibitions which c. 1722 do not rely on, but are in any case among their ordinary attributions: e.g., a singular precept (cf. cc. 49, 58 § 2), exclusively declared to the interested party (cf. c. 53-56); a temporary substitution for the person being investigated in his habitual location by another person, and entrusting him with a different function in another opportune place to safeguard his fame during the investigation; etc.
- The duration of these measures will be, at the most, the time strictly necessary for the investigation. Once this is finished, if it is decided to archive the proceedings, the measures will cease. If, on the other hand, it is decided to proceed criminally, they must be renewed (if they are considered sufficient) or replaced by one of those in c. 1722, in the decree that orders the initiation of the process or procedure (*see* 6.6) or in another separate one, as it seems convenient in view of the circumstances.

6.3. *Who should investigate?* At times, it will be feasible and prudent for the same Ordinary to carry out the investigation personally (*see* c. 134§ 1). At other times it will be preferable to entrust the investigation to “a suitable person” (c.1717 §1).

- The standard does not specify what suitability requirements should be met by the person in charge of the investigation. In general, it must be a prudent, discreet and, if possible, experienced person. Since c. 1717 § 3 equates this figure, for certain purposes, with that of the “auditor”, the counselors can determine the requirements that c. 1428 § 2 demands for it.
- Taking into account the circumstances of the matter, attention must be given to other qualities: e.g., that the investigator does not have a personal relationship with the facts or with the subjects investigated; that its action will not produce strangeness or may give rise to speculations that damages the fame of the persons investigated (cf. c. 1717 § 2); and who has the qualification necessary to assess some technical aspect of the issue (economic or financial); etc. If it is a question of investigating the behavior of a priest, it seems that it would be useful for the investigator to be a priest as well, as the law in such cases requires for the notary (cf. c. § 483 § 2).
- It should also be borne in mind that if the investigation is entrusted to the judicial vicar or another judge, they will be prohibited to intervene as judges in the criminal process, if it is later decided to carry it out judicially (cf. c. 1717 § 3), and they should be inhibited (from judging) or the case itself could be challenged.

6.4. *Object of the investigation.* The investigator’s task, according to c. 1717 § 1, refers to two aspects:

- *Objective* aspect: First of all, the «fact and its circumstances» must be investigated, in order to verify if an objectively criminal behavior has taken place or is taking place; and to specify as much as possible the data on the subjects involved, the facts and the circumstances (persons, time and place, etc.).
- *Subjective* aspect: In addition, the "imputability" (*see* 2.3) of the facts of the person or persons investigated must be investigated (*see* 2.3.7; 8.2), since, as indicated, the materiality of the facts that are objectively illicit or reprehensible entail criminal responsibility.

6.5. *Method of Investigation.* The Ordinary must direct the investigation at all times, which must be carried out with caution and discretion (*see* c.1717 §1). He is to take good care to avoid (with due diligence and by way of acting, by action or omission) jeopardizing the good reputation of anyone (cf. c. 1717 § 2), especially that of the investigator and also other people and even the Church.

- If the Ordinary does not personally investigate (*see* 6.3), the person appointed for that function has the same powers and obligations as the law assigns to the auditor foreseen for the judicial process in c. 1428 (c.11717 §3): it is up to him, therefore, to collect the elements that are useful for the purpose of the investigation and to make them available to the Ordinary, acting in accordance with his mandate. When doubts arise in the performance of his task, he can also decide provisionally, as long as the Ordinary provides, what elements to collect and in what way to collect it.
- One of the conditions which decisions must be made is whether to inform the one being investigated of the investigation and its reasons, or to what extent to do so, in this case. The Circular Letter that the CDF forwarded in 2011 to the Episcopal Conferences on the Guidelines for the treatment of offenses reserved for that Congregation may be used as guidance: "The prudence of the Bishop or of the Major Superior shall decide what information shall be communicated to the accused during the preliminary investigation." The reasons that will have to be considered are, e.g., the convenience of not bothering, perhaps uselessly, those being investigated; the need for information that only he can give for the investigation; the fear that he may destroy evidence or otherwise hinder the investigation, etc.
- The dossier of the various actions (interviews, inspections, visits, etc.) carried out during the investigation must be established, with the intervention of the notaries (if it is the case cf. c. 483 § 2), so that everything is duly documented (cf. c.1719).

6.6. *Conclusion of the investigation by decree.* When the Ordinary considers that the elements gathered during the investigation (or after deciding to omit it, as superfluous: *see* 5.4.2) are sufficient to make a decision (on whether or not to open the process or penal procedure at this time), he must issue a new decree with which the investigation is concluded (*see* c. 1718 § 1; *see* Annex, 4).

- It can be considered that the collected elements are "sufficient" if they are sufficient to justify the decision contained in this decree of conclusion and it can be prudently foreseen that, even if the investigation were to continue for some time or new supplementary measures were taken, no data would already appear that would lead to modify what was decided.
- In any case, the decree must be revoked or modified by another if, in effect, new elements emerged that make the Ordinary see that he has to change his decision (cf. c. 1718 § 2).

- Before giving the decree, if he considers it prudent (cf. c. 1718 § 3), the Ordinary can consult with two judges or with two other experts in law (the judges, in their case, do not act here as such, but as experts, but they will be prohibited to act properly as judges on this same matter: *see* 6.3, the underlying logic is the same as in c. 1447).

- In the decree, based on the information and evidence collected, it must be established whether criminal proceedings are admissible or not and, where appropriate, by what means. Specifically:

1) If the procedure to impose a penalty can be initiated (cf. c. 1718 §1, 2°), because investigation has made it possible to obtain, in principle, sufficient elements, from the objective and subjective point of view (*see* 6.4) to substantiate and prove (cf. c. 1526) the accusation.

2) If, of course it *is possible* and *convenient* to do so, concerning c. 1341. This norm asks the Ordinary to be careful to initiate the penal procedure only when he sees (*see* 6.8) that other means of pastoral solicitation are not enough to restore justice, obtain the delict's amendment and repair scandal (cf. c. 1718 § 1, 2°).

- This assessment should not be made lightly, since an unjustified inhibition could amount to a crime under c. 1389 (see also: Pope Francis, m.p. *Come una madre amorevole*, 4-VI-2016).

- Naturally, in assessing whether or not other pastoral remedies are sufficient instead of penal proceedings, the nature and seriousness of the delict and the scandal must be taken into account; and the possible special rules applicable in the case.

- P.e., if the competence belongs to the Holy See (because it is a reserved delict), the lesser Ordinary could not just file the case and not send it to the competent authority, if he considers that "it is not convenient" to proceed, on the basis of cc. 1718 § 1, 2° and 1341 (*see* 6.9).

3) If, as the case may be, judicial proceedings or with just cause and provided that the law does not prohibit it (cf. c. 1342), the ordinary can proceed extra judicially, that is to say "by administrative means" (cf. c. 1718 § 1, 3°). This guide is limited to explain the way to proceed in this second possibility. When the judicial option is chosen, which is the one that the law favors because of the greater protections offered to the delict of a crime, the provisions of cc. 1721 et seq. must be followed).

4) If the Ordinary decides he does not have to take penal actin, because the investigation clearly shows the innocence of the person being investigated, or because sufficient evidence has not been obtained to initiate a process, the decree must conclude ordering the file to be recorded.

- C. 1719 orders that the minutes of the investigation and the decrees of the Ordinary which begins and ends the investigation must be recorded in the secret archive of the curia (cf. c. 489). Both must be duly motivated decrees (*see* c 51). All the documents that precede the investigation (that is, those related to the credible news of the crime that motivated it) must also be filed in the same record.

6.7. *The question of damages.* Criminal conduct, in many cases (depending on its nature), in addition to the criminal consequences, may also give rise to the obligation to repair or compensate

for damages caused by the activity of the accused (*see* c.128) to specific persons harmed, physical or juridical, even if the accused is acquitted in the criminal aspect (cf. c. 1729-1731, which regulates the legal action for the recovery of damages, exercisable in the same criminal process).

- In this regard, what is interesting to point out is that c. 1718 § 4 allows the Ordinary (not the judge) after the preliminary investigation and before giving the decree by which he decides whether to proceed or not and by what means (*see* 6.6), can consider whether it is appropriate to request the consent of the parties so that either he himself or the investigator who has acted equitably resolves the issue of damages, so as to avoid unnecessary judgments. In these cases, it is convenient to keep in mind:

- That it is not a judicial process, in which the judge or the court, applying the provisions of the law, would dictate a sentence that would impose on the parties the resolution by virtue of their power to judge.
- That, as the law foresees this possibility, it is not also a question of an administrative decision, imposed by virtue of the executive power.
- It is an intervention by the authority to resolve the issue equitably, with the consent of the parties.
- The consent of the parties is, therefore, necessary: first of all, to authorize the Ordinary or the investigator to intervene in accordance with c. 1718 § 4; and also to give effect to the solution that is reached: the parties must reach a compromise and document it (in line with the provisions of cc 1713-1716) and to abide with the elements of the decision that is realized. Otherwise, they could always exercise the ordinary action of rescission afterwards (cc 1729-1731), rendering the attempt of an extrajudicial solution useless.
- The Ordinary, by virtue of c. 1718 § 4 can (and must) propose to the parties this type of action whenever he considers it convenient, with criteria analogous to those c. 1446.
- Care must be taken to ensure that the extrajudicial resolution of the question of damages is recorded in a document recognized by local civil law (cf. c. § 1718 § 4): a document signed by the parties; an agreement signed by the parties; etc.

6.8. *The preliminary investigation and the penal remedies.* The preliminary investigation, as has been said, can conclude with the decision not to begin the actions to impose a penalty.

- Sometimes, as a consequence of the investigation and according to law, the Ordinary can decide (always by decree: c.1342 §1) to apply other pastoral measures: the penal remedies and penances, already treated (*see* 3.3); Annex, 4.2 and 4.3). In fact, it may happen that the investigation results in the innocence of the person being investigated, but it is convenient to detain him because of imprudence, disorders or errors, not criminal (at least not yet, or not clearly), in his behavior (cf. 1339 §§ 1-2).

- It is also possible that the investigation results in indications that are not sufficient to initiate a process or an administrative procedure, but that aggravate the suspicions of the commission of a crime, even if it cannot be proven (cf. c. 1718 § 1 ).

- And it may so happen that serious and sufficient elements emerge from the investigation, which would allow the initiation of criminal proceedings. But before issuing the decree of conclusion of the investigation (*see* c.1718), the Ordinary, in accordance with provisions of c. 1341, may decide to check whether evangelical fraternal correction, or a warning of another type, or a proper criminal remedy (formal warning or reprimand) are sufficient for the subject to amend, provided there is no scandal or other repercussions. In this case, the means that have been set and their result will also be

included in the file of the preliminary investigation and in the motivation of the decree in which it is decided to initiate or not the criminal process or proceeding.

- In some cases, according to his prudence, the Ordinary can add a penance to reprimand or formal warning (c.1340 §3).

- Finally, it is possible that the type of crime in question is punishable by censorship. In this case, the previous admonition, as indicated (*see* 3.2.1), is a necessary requirement for the valid imposition of the censor (c.1347 §1). A prior warning is also required in order to be able to apply certain expiatory penalties provided for certain offenses (P.E., cf. c. 1371 § 1, etc.).

6.9. *Special rules for penal cases reserved to the CDF.* When the news of the possibility of a crime is one of *delicta graviora* reserved to the Congregation for the Doctrine of the Faith, the provisions of the SST norms, which are clear, govern the procedure.

- The procedural rules relating specifically to the crime of sexual abuse of a minor under 18 years of age by a cleric was subsequently summarized in the aforementioned Circular of the CDF, dated May 3, 2011, on the Guidelines for action of the Ordinaries in these cases. Direct consultation of these documents will provide the best course of action.

- The framing of the initial steps of the procedures on cases of child abuse in the general scheme of procedure explained so far would be as follows:

- The preliminary investigation is still necessary, and is the responsibility of the Ordinary (*SST*, Article 16). If the case is brought directly to the CDF (eg. by a complaint), without the investigation having been done, the Cong. can perform the actions on its own that would originally correspond to the Ordinary (*SST*, Article 17).

- The investigation is carried out as explained in sections 6 to 6.5. The 2011 *Circular* expressly states that “unless there are serious reasons against it, and from the stage of the preliminary investigation, the accused cleric must be informed of the accusations, giving him the opportunity to respond to them” (this is not yet the formal accusation, which would take place, where appropriate, after concluding the investigation and beginning the procedure: *see* 7.4.2.1).

- The Circular also offers other important information about this phase of the proceedings. Specifically, with regard to collaboration with civil authorities, since these behaviors are both civil and canonical crimes, it is said that “it is important to cooperate in the field of respective competences. In particular, without prejudice to the internal or sacramental jurisdiction, the prescriptions of civil laws are always followed as regards remitting the crimes to the legitimate authorities”. Therefore, the Episcopal Conferences, in the Guidelines that they elaborate for their scope, “must take into account the legislation of the State in which the Episcopal Conference is located, in particular as regards the eventual obligation to give notice to civil authorities”. Thus, in these cases-excluding others in which the canonical crime is also in State legislation, the Ordinary must ensure that he knows well and follows the dispositions of his Episcopal Conference in this regard.

- The decree of conclusion (6.6), as in the common cases, must first of all assess the investigation carried out, which will be the basis of the decision that is adopted. Specifically, it must express one of these alternatives:

- 1) That from the investigation it turns out that there is no basis to proceed criminally. In this case, the decision, which should contain the decree, is to be archived in the proceedings (*see SST*, Article 16, *see* 6.6.4).

- The cause may be, p. e., that the elements collected show that the news of the possible crime is clearly false; or that after an appropriate, rigorous and complete investigation, no element has been found to verify its truthfulness.

2) That, on the contrary, it turns out that there is a basis for proceeding (c.1718 §1, 1°). In this case, the decision of the decree will be to forward what has been done so far to the CDF.

- The difference with respect to non-reserved cases is that the Ordinary does not make the decisions that c. 1718 § 1, 2°-3° (on whether it is convenient to proceed and by what means: *see* 6.6, 2-3). You only have to send the necessary documentation (a form can be obtained from the CDF itself to refer to the case, which indicates everything necessary), along with the report of the Ordinary, and to follow the instructions that the Congregation will give to the Ordinary acknowledging that they have received it.

## 7. METHOD OF PROCEEDING FOR THE IMPOSITION OR FOR THE DECLARATION OF PENALTIES

7.1. *Preliminary clarifications.* When a faithful develops a behavior that could be penal (*see* 5), the first necessary question is to determine which crime would specifically be dealt with and which law or criminal precept is typified (*see* 2.4).

-This must be clear already in the preliminary investigation (*see* 6): with all clarity from the beginning, or at least in a sufficient way so that the decision to proceed criminally is not reckless, although one has to finish specifying the qualification of the conduct considered to be criminal in the course of the judicial process or administrative procedure that is open to impose a penalty. In any case, the accusation (cf. c. 1720 §1, 1; *see* 7.4.2.1), if it is done, must be clear and specific.

-As already indicated, if the offender's behavior is seriously disorderly or even harmful but is not criminal, he cannot legitimately be sentenced (it would only be possible to intervene criminally in the exceptional case exhibit in 7.2).

-In this regard, it is worth remembering that both criminal law and the criminal precepts are subject to *strict* interpretation (*see* sections 18 and 36), so that the conduct that is analyzed in each case must be strictly applied, not in an approximate or analogical way, as specified in the requirements by law.

-On the other hand, it should also be noted that criminal law cannot be *retroactive* (that is, it cannot include an exception from those provided in the last subparagraph of section 9), so it only affects the behaviors that occurred after its promulgation. Consequently, if a person did something reprehensible, but at that time it was not a crime, then a law was changed that would consider that conduct to be a crime and provide for the corresponding penalty, that law would not affect the past events. Instead, the law most favorable to the accused would be applied (even if later), according to the principle contained in c. 1313 § 1.

-Recall, finally, that all crimes must consist of external conducts (*see* 2.2), and sometimes not only external, but also with effective impact to the community (cf., p.e., c. 1330).

7.2. *The exceptional assumption of c. 1399.* C. 1399 regulates an exceptional case, to avoid by default or difficulty the anticipation of the right to exemplify crimes, ecclesiastical authority is reduced to incompetence in some cases in which it is truly necessary to proceed criminally to protect the good of church.

- Specifically, it establishes that, if there is a violation of the divine or ecclesiastical law not defined in the *CIC* or in another law (universal or



particular), *only* the Ordinary (the canon does not say it explicitly, but the judge would not have power for this performance) can punish with a just penalty when these requirements are met simultaneously:

- that there has been an external violation of a divine or canonical non-criminal law;
- That this offense is especially serious;
- that there is urgent need to repair the damage and the scandal.

- The first requirement presupposes that canon law does not define the act as a crime, nor does it intend to define every theoretically conceivable violation of divine law and logically of ecclesiastical law. For this reason, it is possible that at times there will be acts that, at the time of promulgating the law, was not considered necessary to establish as a crime (because of its infrequency, because of its scarce community relevance, or for other reasons).

- With this presupposition, c. 1399 allows action to be taken under cover only in cases of special gravity. Otherwise, there would be an unjustifiable breakdown of legal safety in the ecclesial community. In assessing whether a specific infringement justifies such an action, the general criteria that would justify ordinary criminal proceedings (*see* 1) must be considered, but subsequently reinforced by the completely exceptional nature of this possibility of action (which technically falls under the rule of law "hateful restriction").

- Third, the canon requires that, in addition to being a particularly serious offense, it is urgent to prevent (if necessary, interrupt) or repair scandals or damages due to the conduct in question.

- It must be borne in mind that, in these exceptional cases, what is authorized in canon 1399 is not that a penalty is imposed directly without observing any procedure, but rather to *proceed criminally* with the essential elements and guarantees of any criminal action in a supposition not previously classified as a crime.

- In practice, except for a conduct consisting of a single act, already performed and not repeated: eg., by consummation of the act-it can normally be dealt with in an appropriate manner based on the urgency of repairing the scandal by previously giving a penal precept (*see* 2.4.2). It would be a question of commanding or explicitly forbidding the subject to do a certain behavior, setting a deadline (which may be as short as from the moment of notification: eg, «upon receiving the communication of this precept», or «the next day») and establishing a penalty (including *latae sententiae*) appropriate to the seriousness of the conduct, in the case of non-compliance.

- In fact, the simple act that the authority intervened in this way (giving publicity appropriate to the nature of the infraction) could normally be

sufficient as a first measure (not necessarily the only or last) to counteract the scandal.

7.3. *The decision to follow the judicial process.* In normal cases, when the investigation confirms the news of the crime that led to its source (*see* 5.1), the Ordinary, while expressing his decision to proceed, must determine, in the same decree that concludes the investigation (*see* 6.6), if the judicial process or the administrative procedure to impose the penalty is to be followed (it is not an indifferent matter, nor can it be considered as resolved implicitly or tacitly: (*see* 7.4).

-The judicial process to which c. 1342 is the *criminal process* regulated specifically in the cc. 1717 ss. The duty of the Ordinary in this case is to deliver the acts of the proceedings (from the news of the crime to the decree of conclusion of the preliminary investigation) to the promoter of justice, so that he exercises his function before the court, preparing and presenting the indictment that will start the process (*see* cc. 1721 ff.). From that moment on, the Ordinary's administrative action ends and the autonomous judicial action of the court begins.

7.4. *The decision to follow the administrative route.* With regard to the administrative procedure for the imposition of penalties, it should be noted that canon law:

-foresees that the law may prohibit the use of this procedure in some cases (cf. c. 1718 § 1, 3°).

-requires, in order to legitimately opt to follow it, that a *just cause* opposes (it is not necessary that it *prevents it* absolutely) the option of the judicial process (cf. c. 1342 § 1). They can be just cause, eg, the lack of judges or court, as well as other circumstances that clearly affect the procedural aspect of criminal proceedings and cannot be classified as an “unjust cause”.

-proposes that the Ordinary take this decision after making the consultation provided in c. 1718 § 3, if he deems it appropriate.

-requires that the criminal administrative procedure be strictly respected in all cases (cf. c.18), the norms that regulate it, especially in everything that affects the guarantee of the right of defense and the fairness of the decision (cf. cc. 221 § 3; 1720).

7.5. *The procedure of c. 1720 and its implicit references.* C. 1720 regulates the procedure only in its essential steps. Within these limits, the Ordinary, taking into account the circumstances and always taking care to guarantee the accused the right of defense (cf. c. 1720, 1°, cf., analogously, c. 1620, 7° in relation to c. 1342 § 3), may decide at his own discretion on the

specific actions to be taken in each procedure and its succession, as well as the deadlines and terms.

-Nevertheless, it is appropriate to indicate that the *CIC* contains much more precise norms about the criminal process (cf. cc. 1721 ff.) and about the elements and fundamental actions of the process in general (*see* c.1728). Although these canons do not require in these cases any *procedural norms* (cf. c. 1342 § ; otherwise, it would not make sense not to make a judicial process), they do constitute the implicit reference point for obtaining the criteria regarding the way of proceeding that allows one to act correctly in the various aspects that c. 1720 does not regulate in detail (*see* c.19<sup>1</sup>).

7.6. *Possible development of the steps of the procedure.* The following is a possible development of the administrative procedure for the imposition of penalties envisaged in c. 1720, with the main normative references that may be useful to keep in mind in order to apply it properly, since each of the established steps may include various actions.

7.6.1. *Communication of the accusation to the accused.* When the Ordinary, in the decree that concludes the preliminary investigation (*see* c.1718), legitimately decides to proceed extra-judicially, c. 1720 §1, 1° he must stipulates, first of all that the accused be informed of the accusations with evidence and give him an opportunity to defend himself.

-This can be done by notifying the offender of the decree (cf. c. 54), but bearing in mind that, since it is a criminal matter, almost always, it must be notified according to c. 55. Indeed, the nature of the matter will suggest that normally the Ordinary does not limit himself to communicating it in writing, in order to keep the proper reservation.

- It must be borne in mind that, in addition, writing a formal accusation with the complete enumeration of the evidence may still be premature, because the knowledge of the facts at this stage of the procedure, even if sufficient to proceed, could not surpass at the moment the category of reasonable indication; or present gaps or errors in some aspects. On the other hand, handing it in writing to the accused could be detrimental to the actions for other reasons, putting the reputation of other people at risk, etc.

-In short, the initial phase of the procedure may include various acts, depending on the circumstances:

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<sup>1</sup> C. 19 prohibits applying the analogy in criminal cases, but properly in regard to the substantive aspects of the case (eg, consider including a type of criminal behavior that the authority may consider similar to the type, but not expressly mentioned. - by law, etc.), not in the procedural aspects that facilitate proceeding correctly and favor the defendant's guarantees (not if they harm or restrict their rights, since in that case the principle contained in c 18).

- *Citation or summons of the accused.* It can be done in writing, without the need to specify the matter in detail; or even orally, if it is only about requesting their presence. In any case, when one is summoned, the date, time and place must be clearly set<sup>2</sup>, for the accused to appear before the Ordinary. Cc. 1507-1512 could be a guide on some aspects of this citation.
- *Appointment of a lawyer.* In a matter of this seriousness and which involves a certain technical complexity, it is convenient in principle that the accused have the help of a lawyer, in order to avoid damaging the right of defense (*see* § 212 § 3). Depending on the circumstances, the Ordinary, when citing the accused, may indicate the opportunity to appoint a lawyer to accompany him already in the obligation in which the accusation will be communicated. The ordinary could also propose during that hearing, once he has communicated the accusation, that the accused name a lawyer<sup>3</sup>. And in cases where it seems appropriate to make the notification only in writing, without appearance, it will be opportune to include that warning in the text. Cc. 1723 and 1481-1490 can be a guide on this matter.
- *Appearance for communication.* The Ordinary, the accused and at least a notary or two witnesses (cf. cc. 1718 §3; 1720, 2° who agree to be the same two people who advise the regular procedure) must be<sup>4</sup> present. Before all else, the accused must be notified<sup>5</sup> of the decree of conclusion of the preliminary investigation and the opening of criminal proceedings (cf. C. 1718 §§ 1-2), if the accused has not yet been notified (as assumed in these pages, to support the explanation). Since, generally, both the accusation and the reasons and evidence of which the decision to initiate the criminal procedure is based will be included in the decree only summarily (*see* c. 51), the information may be completed orally or in writing to the extent that the accused needs it to be ensured that he is given the possibility of adequately defending himself against all the accusations (cf. c. 1720, 1°).
- *Possible absence of the accused.* If the accused does not appear when he has been duly summoned (cf. c. 1720, 1°), the Ordinary,

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<sup>2</sup> It would be enough to leave the minimum time interval considered necessary, depending on the circumstances: from a couple of hours after a telephone call, up to a few days, etc. In this case, the oral call should be recorded in a record, if there is a witness, or in a very short document signed by the Ordinary (among other things, in the event of absence).

<sup>3</sup> In that case, it will be convenient that, when communicating the accusation, the accused is warned that, if he wishes, he can refrain from making any statement until he has a lawyer.

<sup>4</sup> Cfr. C. 55. Minutes of the notification must be drawn up, so if the notary is not present, some of those present must perform that function.

<sup>5</sup> This can be done either by reading the text, or by handing it to the accused, so that he can read it in the presence of the participants in the act, or to take it away if nothing advises otherwise (*see* cc 55-56).).

after making the necessary verifications (*see* c.1592), if he considers it would be unnecessary to reiterate the announcement, he must record the result of that unsuccessful attempt to notify. To do so, he may request the notary to record the non-appearance and checks the diligences made; and give a decree declaring the offender absent from the proceeding (cf. c. 1724 § 2). Afterwards, the procedure can be continued until the final decree (*see* c.1720 §2). However, if the accused appears later, with the procedure still in progress, and wishes to exercise the right of defense, the Ordinary will admit it, but not avoid purely delaying maneuvers. C. 1592 serves to provide guidance in this regard.

- *Precautionary measures.* The Ordinary (cf. c. 1342 § 3), if considered necessary for any of the purposes envisaged by c. 1722, can take the precautionary measures provided for therein, without the limitations that have been indicated for the adoption of provisional precautionary measures during the preliminary investigation (*see* 6.2). These measures can be included in the decree concluding the investigation (c.1718), or in another separate decree (which can be declared to the accused at that time or at another, according to cc. 54-56). They could also be communicated orally to the accused in the same appearance, so that they are recorded in the minutes.
- *Determination of the next appearance.* Once all the necessary or convenient conditions have been communicated to the accused, the Ordinary will give him a period of time (ordinarily brief: eg, of ten working days, or the time considered reasonable in the circumstances of the case) to prepare adequately his defense and present the evidence he deems appropriate (cf. c. 1720, 1<sup>o</sup>). The act of oral communication will conclude with the signing of the minutes by the accused (cf. c. 56), the Ordinary and the notary or the witnesses; and with the scheduling of the date and time for the next appearance.
- *Presentation of allegations and evidence.* The purpose of this appearance is the presentation of evidence and allegations, written or oral, by the accused and the presentability of the evidence of the accusation that was not presented before, eg. the accused's interrogation. It may or may not be necessary to schedule more sessions to complete the task and always avoid unnecessary delays. In any case, the Ordinary must ensure that the provisions of cc. 1725 and 1728 § 2 are complied with. Cc. 1526-1586 can serve as guidance for the presentation, admission, and practicality of the evidence.

7.6.2. *Assessment of the evidence and allegations.* C. 1720, 2° describes the next phase of the procedure saying that, once the appearances and appropriate actions have been completed, the Ordinary must *carefully evaluate* with two assessors the evidence and arguments presented in the procedure.

-If nothing prevents it, the assessors will be two judges or experts with another title in canon law mentioned in can. 1718 § 3. For the evaluation of evidence, the criteria established by the *CIC* regarding the evidence in judicial proceedings may be guiding principles (cc. 1526-1586).

-The purpose of this evaluation (*see* c. 1720, 3°) is to see if it is possible to reach *certainty* about the crime and its imputability (*see* 2, cf. cc.1321, 1717 § 1). It is about the moral certainty required for judges in c. 1608, that c. 1342 § 3, which also requires explicitly for the Ordinary in criminal procedure<sup>6</sup>. Otherwise (if this moral certainty is not reached, or if the innocence of the accused is proven: cf. c. 1726), the Ordinary must issue a motivated decree of acquittal (in this case, taking into account the possibility of the use of penal remedies and penances provided for by the law: *see* 6.8, cf. cc 1339-1340).

- On the other hand, if he reaches the necessary moral certainty, the Ordinary must give the *criminal decree*, in the last phase of the administrative procedure.

7.6.3. *Criminal decree* If, once the proceedings have been completed, the offense is established with certainty and the criminal action has not been extinguished (cf. c. 1362), the Ordinary must give the decree of condemnation, the penal decree, by which, in principle, the penalty is imposed on the accused (cf. c. 1720, 3°).

-Regarding the content of that decree, the *CIC* specifically reiterates (in addition to the general norm of c. 1342 § 3) that the Ordinary can exercise the same powers that the judge would use in the process to decide on various aspects of the application of punishment, according to the cc. 1342-1350 (*see* 8).

-Regarding the form, anything that is not specifically regulated, the general norms on singular decrees are applied (cc 35-58). Specifically, the requirement of c. 51 is completed here with the specification that, in stating the reasons, this decree must express, "at least briefly, the reasons of law and fact". That is to say, it must be written with a logical scheme similar to that of a judicial sentence (cf. c. 1608 ss.). They can serve as orientation, with the appropriate adaptations, especially cc. 1608, 1611 and 1612.

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<sup>6</sup> Art. 247, § 2 of the Instruction *Dignitas connubii*, although it refers directly to the judge in the matrimonial proceedings: "For the necessary moral certainty according to law, the prevailing weight of evidence and evidence is not enough, but rather it is required, also that any prudent positive doubt of error be excluded, as much in the right as in the facts, even if the mere possibility of the opposite is not eliminated".

-The decree must indicate the means of contestation that the accused can use (cf., for judgments, c. 1614). Specifically, it must mention the possibility of hierarchical recourse and its term (cf. cc. 1732-1739). Since it is not one of the assumptions foreseen by c. 1734 § 2 (except when the decree has been issued by an Ordinary dependent on the Bishop), it will also be necessary to express in the decree the need to previously make the request for revocation or amendment indicated in c. 1734 § 1. Both this petition and the subsequent appeal would suspend the sentence according to can. 1353 while they are resolved.

-The accused must be notified of this decree according to the cc. 55-56.

## 8. NORMS AND CRITERIA ON APPLYING THE PENALTY

8.1. *General criteria.* The imposition of penalties *ferendae sententiae* is not simply automatic, the result of limiting itself to mechanically applying a predetermined penalty *a priori* by the Legislator. On the contrary, the canonical penal norms envisage a wide prudential margin of discretion—always within the framework of the law, when applying the penalties.

-Deciding what penalty to impose in each case is a task that is largely left to the Ordinary (and the judge, in the case of the criminal process), so that his decision can be adapted as best as possible to the specific circumstances of the case, always without distorting the character of criminal proceedings and ensuring that the decisions it adopts in the exercise of the powers conferred by the law in this matter are apt, in this case, to achieve the aims of the punishment in canon law (cf. c.1341).

-When choosing the sentence to be imposed, it is necessary to first of all verify what type of penalty is provided by the norm applicable to the case: optional, mandatory, determinate or indeterminate (*see* 3.1.2), since it depends in part on the margin of discretion, the Ordinary is granted the right in each case<sup>7</sup>, as will be explained below.

-The circumstances of the case must also be specifically assessed, especially: the number of crimes committed; recidivism; the possible cooperation of other people in criminal activity; the attenuating, aggravating and mitigating circumstances; the specific damages caused to direct victims, if any, and to the community of the faithful; the scandal, which is a specific and qualified aspect of that damage; the personal dispositions of the accused and his possible cooperators; etc.

-According to c. 1348, when, according to the law, the Ordinary decides not to impose any penalty in response to the circumstances (*see* 8.3-8.4), he can, in any case, attend to the needs of the common good and to the utility of the accused himself by means of penal remedies and penances (*see* 3.3), and also by other means of pastoral request (exhortations, warnings, advice, precepts, etc.).

8.2. *The number of crimes and delinquents.* Among the circumstances that must be assessed, as indicated, the law attributes direct relevance to the

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<sup>7</sup> Often, although not necessarily, the penal precept will be issued by the same Ordinary who will intervene in case of non-compliance, so that it can take into account the most relevant circumstances of the case when establishing it. However, in your case, in the procedure to apply the penalty you can re-evaluate those and other extremes that you consider appropriate to aggravate, mitigate, substitute or not impose the penalty, as you see more appropriate. When, on the other hand, the Ordinary imposes a penalty established by a precept of another Ordinary, it will be prudent to abide by the norms that apply to the application of criminal law, which will be discussed immediately.



number of delicts that have been committed. Ordinarily, in the cases of *plurality of crimes*<sup>8</sup> (cf. c. 1346), the principle that must be imposed is *as many penalties as crimes have been committed*, moderating equitably the result if the Ordinary prudently judges that the strict application of the general principle would produce an accumulation of excessive punishment.

-This principle is applicable when several crimes can be distinguished clearly, numerically or in terms of the type of crime. When it comes to repeated acts, but which can be integrated into the same continuous or successive criminal conduct, it will normally be more appropriate - and less complex - to impose a single penalty (the one provided for the offense in question) but calibrating its seriousness in consideration of other factors such as the duration of the criminal behavior, the frequency of the reiteration of acts, etc.

-As regards the possible application of penalties to persons who have cooperated in different ways in the commission of the offense (*see* 2.3.7), as fundamentally applied in c. 1329. Logically, the true establishment of the degree and type of cooperation of other persons in the crime and the application of penalties, as the case may be, should be done according to the same procedure (*see* 6-8) for the main actor of the crime (repeating them, either at the conclusion of the preliminary investigation if there are then details for it, or during the procedure already underway if the elements suggesting their involvement in the crime result from subsequent actions) and always respecting the right of defense.

8.3. *Assessment of the exempting, attenuating and aggravating circumstances.* Circumstances that may modify imputability (*see* 2.3.3), exempting it, attenuating it or aggravating it, should generally be assessed at this stage of the procedure, since this is precisely where they exert their influence on the content of the decree that concludes the procedure (cf. c. 1720, 3°).

-The fundamental criteria of valuation are those indicated by law when it determines the influence of each of these circumstances, including them in one group or another. In addition, apart from direct efficacy that they may have by themselves as modifying circumstances of the imputability, the canonical norms sometimes consider them as elements that the authority can take into account when choosing the penalty.

-Thus, eg, if the subject had acted with freedom but was affected by any of the circumstances indicated in c. 1345, this norm grants the Ordinary the general faculty to *stop imposing any type of penalty* foreseen by the

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<sup>8</sup> This assumption (the reiteration or plurality of crimes committed must not be confused *before* the authority intervenes) with *recidivism*, which occurs after having been punished for an offense (even if the penalty is suspended) or it is legitimately decided not to apply it, as explained below).

law, if they think that other means can better provide for the accused's amendment. The condition is that it ensures in any case the repair of justice and scandal. Naturally, this condition requires that the faculty granted be exercised with careful consideration of the circumstances and the ecclesial repercussion of the case.

8.3.1. *Exemptions.* According to c. 1323, an accused is not *subject* to any penalty (in this case, because it cannot be legitimately imposed, not because the Ordinary decides not to impose it) who in committing these types of offense:

- had not *completed* (while he had initiated them) the 16 years of age.
- ignored without fault (c.1325) that he was violating a law or a precept (he did not necessarily ignore the existence of the law or the precept, but the fact that his behavior violated them). To this ignorance are equated error and inadvertence.
- He acted *because of* (not only *with*) *physical violence* that he could not resist.
- He was the victim of a *unforeseen event* that he could not foresee or that, if he had foreseen, he could not have avoided (eg, if a person pressed without wanting a button on his phone, kneeling or sitting down, and recorded confession, would not incur the offense provided by c. 1386 § 3).
- He acted coerced by *grave fear* (even if only *relative*: that is, for a reason that might not cause that fear to other people), or by *necessity* or *serious inconvenience* (in the latter case the merely ecclesiastical laws do not oblige in conscience), or judging wrongly, but without fault, that these circumstances occurred (all this, provided that the act performed is not intrinsically bad or redound to the detriment of souls: otherwise, this circumstance would only be *mitigating*).
- Acted in *self-defense*, on his own or through another person, against an unjust aggressor, with a reaction proportionate to the severity of the aggression he suffered (or believed to suffer, wrongly, but without fault). This supposition does not occur only in cases of physical violence, but also, eg, in cases in which reputation is injured (cf. c. 1390 § 2), etc.
- lacked the use of reason* for a cause (stable or transitory) *not culpable*, natural or not: eg, for having been drugged or drunk (if there was guilt or intentionality, then cc 1324 § 1, 2° and 1325 is applied).

8.3.2. *Attenuating/Mitigating.* The offender, according to c. 1324, it is not exempt from the established penalty, but the Ordinary *must* mitigate it, or impose a penance in its place, in cases indicated in the canon. And the Ordinary can do the same if other similar circumstances occur that are not mentioned in the law, but that in their opinion reduce the seriousness of the crime.

-The intensity of the attenuating effectiveness of each one of the circumstances acknowledged should be prudentially regulated by the Ordinary.

-And it must be borne in mind (cf. c. 1324 § 3) that when the penalty for a crime (eg, of abortion) is *latae sententiae* (see 3.1.1), it is sufficient that one of the mitigating factors mentioned in the canon be given (it does not need to be an exemption) so that the accused does not incur it.

-Specifically, c. 1324 values an extenuating provided that:

- The crime was committed by someone who has (stably) a use of imperfect reason (eg, for psychiatric causes, etc.).
- The offense was committed with a lack of *transitory and culpability* of the use of reason, as in drunkenness or other similar disturbances of mind (drugs, etc.), provided they have not been sought precisely to commit a crime or to excuse themselves. (In that case, it would be an *aggravating factor*).
- The offender acted out of an outburst of passion, not looking for a purpose to commit a crime (otherwise, it would be an aggravating circumstance).
- The offender was more than sixteen years old, but less than eighteen years old (that is, he was still under age).
- The offender was (or, due to a guilty error, believed to be) in the situation described in the defense of *serious fear, need or serious inconvenience*, but in this case did something intrinsically bad or that resulted in damage to souls.
- The offender acted as in the defense of *self-defense*, but disproportionately (eg, with physical violence against a verbal offense), or believing culpably (eg, because he reacted without asking, although there was time, etc.) an aggression that did not really exist.
- The offender acted against someone who caused him grave injustice (in a way apt to produce a violent reaction or revenge that ended in crime).
- The offender (who did not necessarily know that his behavior violated the law or the precept, as in the case of the exemption) ignored without guilt (cf. c. 1325) that the breach of the law (divine or ecclesiastical) or precept bore a penalty.
- The offender acted with non-full imputability, although still *serious* (see 2.3).

8.3.3. *Aggravating factors.* C. 1326 § 1 establishes what *must aggravate* the penalty established by law or precept (eg, by increasing its duration or the extent of its possible effects: number or type of activities that are prohibited,

etc., not choosing the milder possibility that the law would allow, etc.), when any of the circumstances indicated are present.

-It also provides (§ 2) that, when there is an aggravating circumstance, if a penalty was provided *latae sententiae* for the offense, a penance or even another penalty *ferendae sententiae may be added*, following the procedure foreseen (*see* 7): in such case, the penal decree with which the procedure is concluded, will first declare the penalty *latae sententiae* (*see* 3.2.1) and afterwards impose other penalties that are added.

-The aggravating circumstances provided by the *CIC* are the following:

- After a penalty for a crime has been imposed or declared, the offender continues to commit the crime, in a way that allows him to conclude that his persistence in ill will continues.
- The offender is constituted by some ecclesiastical dignity (eg, is a canon, prelate of honor, etc.), even if it is not a government office.
- The offender abused his office (c.145 §1) precisely *to* commit the offense (eg, taking advantage of the access he had to some funds, authorized signature, the possibility of treatment that he offered, etc.).
- It is a *wrongful* crime (*see* 2.3.2) and the delinquent foresaw it (not as a mere theoretical and abstract possibility, but as a real or close possibility in his circumstances), but even so, he did not adopt the precautions that any person with normal diligence would have adopted to avoid that risk.
- The offender acted out of drunkenness or other similar mental disturbances, but provoked voluntarily, precisely to commit the crime (c.1325).
- The offender acted in a passionate outburst, but voluntarily encouraged precisely to commit the crime (c.1325).

8.4. *Exercise of discretion within the framework of canon law.* As it has been indicated, the Ordinary, when applying the penalty according to the cc. 1342-1350 (cf. c. 1720 § 2), enjoys a certain margin of discretion to choose from, among the various options that the law allows and the most appropriate, as a result of assessing the specific circumstances of the case.

-In those cases in which the law allows, depending on the circumstances, to refrain from imposing a penalty (as in the case of absolution), the Ordinary must assess the possibility of providing in accordance with the possibilities foreseen by the law in c. 1348 (warnings, advice, penal remedies, etc.).

8.4.1. *Faculties of the Ordinary when punishment is mandatory.* In principle, the Ordinary who applies exactly the mandatory penalty provided by law (*see* 3.1.2), acts correctly, but can also make other legitimate decisions,

taking into account the circumstances of the case. According to c. 1344, even if the law establishes with compulsory words the obligation to impose the penalty, the Ordinary, acting in conscience and prudently (naturally, although it is not expressly stated in this canon, assuring first of all that if he acts in this way shall incur negligence with respect to the other purposes of the penalty: cf. c. 1341), may exercise the following faculties:

8.4.1.1. *To delay the imposition of punishment* to a more opportune moment, if he foresees that a hasty punishment of the offender could lead to greater evils (eg, because the offender has begun a rectification process, because he is undergoing rehabilitation treatment, because it is an occult crime and an immediate punishment could increase the malice causing scandal or notoriety to people, etc.). In these cases, the imposition of the sentence itself would be delayed (it is not a decision to not impose it, nor simply suspend compliance, which would require having previously imposed it).

-Therefore the procedure concludes with a criminal decree (cf. c. 1720 §§ 2) that: a) declares proven the crime and the imputability, with the expression of the reasons of fact and of law; b) states the decision and the reasons to delay the sentence; c) determine, in a precise or indeterminate manner, the time when the matter will be reviewed to make the final decision (which must always be *explicit*; also if in case it is decided in the future not to impose a penalty according to the 1344, 2°, one must take into account then c. 1348).

8.4.1.2. *To not impose punishment, to reduce it, or replace it with a penance* (cf. c. 1340), provided either the offender has amended and has repaired the scandal, or (it is not necessary that both circumstances coincide) has already been sufficiently punished, or is expected to be (eg, because he is already detained and awaiting trial) by right of the State (if it is a crime typified simultaneously by canon law and by civil law).

-In these cases the criminal decree must contain: a) the declaration that the crime is proven and imputable, with the statement of the reasons of fact and law; b) the decision of the penalty by virtue of this power, with the expression of the reasons; c) where applicable, the imposition of a penal remedy or penance (cf. c. 1348).

8.4.1.3. *Imposing the penalty, but conditionally suspending compliance* - unless the need to repair scandal is urgent - if it is the first crime of someone who until then had led a life without fault. The condition that the law itself includes whenever this decision is made is that, if that offender goes back to commit a crime (it is not necessary that it be a recidivism in the same type of crime) in the time indicated by the Ordinary, he must comply with the law by imposing penalty for the two crimes, once the second one has been proved,

after the corresponding criminal procedure, unless the criminal action has been prescribed by the first in the interval (*see* c.1362).

-In these cases, the decree should contain: a) the declaration that the crime is proven and imputable, with the exposition of the *de facto* and *de jure* grounds; b) the decision to suspend the sentence by virtue of this power, with the explanation of his reasons; c) the condition of not committing crimes in the period of time determined by the Ordinary; d) if it is the case, the imposition of some penal remedy or penance (cf. cc. 1339-1340).

-If the offender returned to committing a crime within the period indicated by the Ordinary, the corresponding procedure should be followed (*see* 6 and 7), starting with the preliminary investigation. The decree with which this procedure would conclude, if it is condemnatory, should contain, in addition to those necessary with respect to the new crime, the declaration, in its case, that the criminal action has not been extinguished (c. 1362) for the first offense and therefore the suspension of the sentence imposed in the proceeding for the first offense ceases, which must begin to be carried out in the manner indicated.

8.4.2. *Powers of the Ordinary when the penalty is optional.* In cases where the planned punishment is *optional* (*see* 3.1.2), the Ordinary may decide (in addition to any of the measures explained in 8.4.1, which are applicable *a fortiori*) to impose the penalty or not, always acting in proper conscience and prudently (cf. c. 1343) in effect, that this faculty exists does not mean that they are indifferent options: to be legitimate, they must be reasons).

-The Ordinary should not decide to stop imposing a penalty without verifying first, with the option he chooses, the demands of justice, of amendment of the offender and of reparation of the scandal will be satisfied in any case (cf. c. 1341).

-On the other hand, the choice is between not only imposing the penalty or doing nothing: all the intermediate options between these two extremes also fit. Specifically, the Ordinary can also choose in these cases (cf. c. 1343) to temper (soften or reduce) the penalty - the specific mode will depend on the penalty in question: reduce time, limit the effects, etc., or by imposing a penance instead (*see* cf. c. 1348, 1340; *see* 3.3.3).

8.4.3. *Determination of indeterminate sentences when imposing them.* Whenever the law (not precept: cf. c 1319 § 1) provides that the judge is the one who must decide an *indeterminate* penalty (cf. c. 1315 § 2; *see* 3.1.2), the Ordinary has the same faculty to do it:

-He must verify that the penal type in which the conduct that has been the subject of the proceedings fits and provides as punishment an indeterminate penalty.

-He must choose (taking into account above all the list of c.1366, but without excluding other penalties, penal remedies or penances) the penalty that is *more appropriate* to punish the crime in question (cf. c.1343, c. 1349: eg. In some cases it may be opportune to forbid the offender certain acts of sacred order or participate in the meetings of a certain council, the obligation to study a certain book may be added, etc.).

-He must also specify the duration of the sentence, taking into account the objective gravity of the offense and the subjective conditions of the offender (eg., it is not the same as a case that has created great scandal and a contumacious delinquent in an occult case and the delinquent who, realizing what he has done, sincerely regrets).

-Unless absolutely necessary based on the seriousness of the case (cf. c. 1349), in these cases of indeterminate punishment, the Ordinary should not impose a censure (*see* 3.2), unless the penalty provided by law for the case is precisely an indeterminate censure. And in no case can he impose perpetual penalties or expulsion from the clerical state (*see* 3.2.3).

-In any case, he must try to ensure that the solution he chooses is proportionate to the seriousness of the damage and the scandal caused, satisfies the demands of justice, and may be useful for the offender's amendment and the repair of the scandal (*see* cc. 1341, 1349).

-When weighing the above issues, one should also take into account the possible mitigating or aggravating circumstances, which will sometimes have a decisive importance on the decision.

-In case the offender is a cleric, the Ordinary must take into account c. 1350, to progress the punishment, if it is the case, in terms of its economic repercussions.

### **Brief complementary bibliography**

To complete the study of some aspect, especially of the criminal types and of the procedure, in the concrete cases the following resources, among others, may be useful:

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ANEX

BASIC SCHEME OF CERTAIN DECREES PRIOR TO  
CRIMINAL PROCEEDINGS

1. DECREE OF ARCHIVE, WITHOUT PRELIMINARY INVESTIGATION, OF THE  
NOTICE OF A POSSIBLE OFFENSE, FOR CONSIDERING IT IMPROBABLE

**[Title]**

NN, Bishop of ... [official of the Ordinary, if not the Bishop] Singular  
decree regarding investigation according to c. 1717 of the CIC

**[Protocol: for more discretion, it can be specific to the  
secret file]**

Prot. N. XX / XX

**[Reason]**

I. As Ordinary competent for the action envisaged in c. 1717, I received [on that date] the denunciation [the letter, the testimony, the evidence, etc.] contained in the reference file, which attributes to the diocesan priest NN [to the lay faithful of this diocese NN, to a religious with residence in this diocese, NN, etc.], perhaps criminal conduct consisting of [brief description of the conduct in question].

II. After considering the matter [and having consulted with ...], I suspect that the news of the alleged crime is implausible for the following reasons: [synthetic expression of the reasons that lead to that assessment].

III. Consequently, in accordance with the provisions of § 1 of the aforesaid canon, which orders the avoidance of the opening of an investigation when it seems wholly superfluous,

**[decision]**

DECREE that is filed according to c. 1719 all documentation of this record, including this decree.

**[place, date and signatures]**

2. DECREE OF ARCHIVE, WITHOUT PRELIMINARY INVESTIGATION, OF THE NOTICE OF POSSIBLE OFFENSE FOR HAVING CERTAINTY OF HIS FALSEHOOD

**[Title]**

NN, Bishop of ... [official of the Ordinary, if not the Bishop]  
Singular decree regarding investigation according to the c. 1717 of the CIC

**[Protocol: for more discretion, it can be specific to the secret file]**

Prot. N. XX / XX

**[Reason]**

I. As Ordinary competent for the action envisaged in c. 1717, I received [on that date] the denunciation [the letter, the testimony, the evidence, etc.] contained in the reference file, which attributes to the diocesan priest NN [to the lay faithful of this diocese NN, to the religious with residence in this diocese, NN, etc.], perhaps criminal conduct consisting of [brief description of the conduct in question].

II. After considering the matter [and having consulted with ...], I believe that the news of the alleged crime is false for the following reasons: [synthetic expression of the reasons that lead to that assessment].

III. Consequently, in accordance with the provisions of § 1 of the aforesaid canon, which orders the avoidance of the opening of an investigation when it seems wholly superfluous,

**[decision]**

DECREE that is filed according to c. 1719 all documentation of this record, including this decree. [A relative provision can be added, for example, to the author of the false report, or to the proportional dissemination of the contents of the decree, if the false news of the crime have been disclosed in some field].

**[place, date and signatures]**

3. DECREE OF OPENING OF THE PRELIMINARY INVESTIGATION AND WHERE APPROPRIATE, APPOINTMENT OF THE INVESTIGATOR

**[Title]**

NN, Bishop of ... [official of the Ordinary, if not the Bishop]

Singular decree of opening of investigation according to c. 1717 of the CIC

**[Protocol: for more discretion, it can be specific to the secret file]**

Prot. N. XX / XX

**[Reason]**

As competent Ordinary, I have received [on such date] the denunciation [the letter, the testimony, the indications, etc.] contained in the reference file, which attributes to the diocesan priest NN [the lay faithful of this NN diocese, the religious with residence in this diocese NN, etc.] the possible criminal conduct consisting of [brief description of the conduct in question]. After carefully considering the likelihood of the news and other relevant issues,

**[decision]**

DECREE that an investigation is to be opened in accordance with c. 1717, to determine the facts, circumstances and, if applicable, imputability of the conduct investigated. The investigation will continue until I consider it possible to make a well-founded decision, in accordance with c. 1718.

Taking into account the circumstances of the matter, I will personally carry out this investigation, incorporating into the file all the documents that will be collected and the proceedings that will be carried out.

[or: Taking into account the circumstances of the matter, I appoint NN to carry out this investigation in accordance with c. 1717 § 3 (cfr., 1428 § 3), under strict reservation and keeping me fully informed about its development].

[In case: Due to the characteristics of the possible criminal acts and of the investigation, I have decided that, for the duration of the investigation, (explain the provisional precautions that you have decided to adopt: *see* 6.2)].

**[place, date and signatures]**

#### 4. DECREE OF CONCLUSION OF THE PRELIMINARY INVESTIGATION

##### **[Title]**

NN, Bishop of ... [official of the ordinary, if not the Bishop]  
Singular decree of conclusion of investigation in accordance with c. 1718  
of the CIC

##### **[Protocol: must take into account the protocol of the decree opening the investigation]**

Prot. N. XX / XX

*[4.1. Conclusion of the investigation and filing of the proceedings for  
innocence of the person who was investigated]*

##### **[Reason]**

During the investigation opened by means of my decree Prot. N. XX / XX, dated ..., [in its case: carried out, under my authority, by NN], no elements have appeared to corroborate the news of a possible crime [denunciation, etc.] that gave rise to these actions [or: there have been known elements that testify the innocence of the investigation; or: elements have been known that lead to the conclusion that the alleged criminal conduct is unfounded; etc. In this case, you can make a brief description of the reasons that lead to that conclusion]. Consequently [after consulting, according to c. 1718 § 3, my decision with NN],

##### **[decision]**

DECREE, according to c. 1718 § 1, that the investigation be concluded and the proceedings be filed in accordance with c. 1719 [depending on the circumstances of the case, it may be opportune to send additional notice of this decision, for example, to the complainant; the investigator himself, if he had knowledge of the investigation initiated; to those who have known about the ongoing investigation, eg, because they have been asked for information, etc. Also, depending on the circumstances, the obligation of secrecy may be imposed]. [It is also possible to use a penal remedy with the person under investigation if, despite their innocence, it is advisable to reprimand or formally admonish him: *see* 6.8].

##### **[place, date and signatures]**

*[4.2. Conclusion of the investigation and filing of the proceedings with suspicion but without data]*

**[Reason]**

I. During the investigation opened by my decree Prot. N. XX / XX, dated ..., [in this case: carried out, under my authority, by NN], no elements have appeared to corroborate the news of possible crime [denunciation, etc.] that gave rise to these actions, nor is it foreseeable that they could have already appear if they lasted longer.

II. Remain suspicious about the conduct of the person being investigated, but it has not been possible to find any basis to try to prove a specific criminal act in a criminal proceeding. Accordingly [after consulting, according to c. 1718 § 3, my decision with NN],

**[decision]**

DECREE, according to c. 1718 § 1, that the investigation be concluded and the proceedings be filed in accordance with c. 1719, without undertaking criminal proceedings or proceedings for the facts investigated. [However, I will cite the accused as soon as possible to formally admonish him, according to c. 1339 § 1].

**[place, date and signatures]**

*[4.3. Conclusion of the investigation with the decision not to proceed criminally, although it could be*

**[Reason]**

I. During the investigation opened by means of my decree Prot. N. XX / XX, dated ..., [in its case: carried out, under my authority, by NN], elements that corroborate the news of possible crime [accusation, etc.] that gave rise to these actions and would allow to try the evidence of criminal conduct in a criminal proceeding.

II. However, taking into account [that it is not a particularly serious conduct; which is the first time that the investigator concurs with it; the accused, when warned, has shown signs of repentance; etc.], and attentive to c. 1341 (c.11718 §1, 2), I believe that on this occasion it is not advisable to proceed criminally, because it can be achieved [having been reached] by other means of pastoral request for the purposes that the penal action would seek.

Consequently [after consulting, according to c. 1718 § 3, my decision with NN],

**[decision]**

DECREE, according to c. 1718 § 1, that the investigation be concluded and the proceedings be filed in accordance with c. 1719, without undertaking a criminal proceeding or proceeding for the facts investigated. [However, I will cite the accused as soon as possible to formally admonish him, according to c. 1339 § 1; or: to impose, according to c. 1340 the penance consisting of ...; or both).

**[place, date and signatures]**

*[4.4. Conclusion of the investigation with the decision to proceed criminally]*

**[Reason]**

I. During the investigation opened by my decree Prot. N. XX / XX, dated ..., [in this case: carried out, under my authority, by NN], elements that corroborate the news of possible crime [accusation, etc.] that gave rise to these actions and would allow to try the evidence of criminal conduct in a criminal proceeding.

II. Attentive to c. 1341 (c.11718 §1, 2), I believe that on this occasion it is appropriate to proceed criminally, because it cannot be achieved [having been able to reach] by other means of pastoral remedy [if applicable, to report the corrections or unsuccessful reprimands, which will be documented in the file] the purposes that the criminal action intends.

Consequently [after consulting, according to c. 1718 § 3, my decision with NN],

**[decision]**

DECREE, according to c. 1718 § 1, that the investigation be concluded and that the criminal proceeding be initiated with the immediate summons of the investigator, pursuant to can. 1720, 1st [or, in case it is decided to proceed judicially: that the investigation be concluded and the minutes be transferred to the promoter of justice so that the case proceeds according to c. 1721]. File according to c. 1719 the documents of the file unnecessary for the criminal procedure.

**[place, date and signatures]**

5. DECREE OF IMMEDIATE OPENING OF THE CRIMINAL ADMINISTRATIVE PROCEDURE, WITHOUT PRIOR INVESTIGATION, WHICH IS CONSIDERED UNNECESSARY BECAUSE THERE ARE ALREADY SUFFICIENT ELEMENTS TO PROCEED

**[Title]**

NN, Bishop of ... [Official of the Ordinary, if not the Bishop] Singular Decree of opening of criminal procedure according to c. 1720 of the CIC

**[Protocol: for more discretion, it can be specific to the secret file]**

Prot. N. XX / XX

**[Reason]**

I. As Ordinary competent for the investigation envisaged in c. 1717, I received [on that date] the denunciation [the letter, the testimony, the evidence, etc.] contained in the reference file, which attributes to the diocesan priest NN [to the lay faithful of this diocese NN, to the religious with residence in this diocese, NN, etc.], concerning a possible criminal conduct consisting of [brief description of the conduct in question].

II. After studying the matter [and after having consulted with ... (cf. 1718 § 3)], I believe that the news of the alleged crime is credible and that, as regards the facts, circumstances and imputability (cf. 1717 § 1), seems to be supported by the reasons and elements of evidence that appear in the file [or: which are set out below] and which, according to my estimation, make unnecessary a further investigation in order to find out if there is sufficient basis to initiate the opportune action (cf. 1717 § 1).

III. Taking into account c. 1341, I believe, however, that in this case it is appropriate to proceed criminally (cf. 1781 §1, 2) [where appropriate, the reasons can be stated synthetically by other means of pastoral request are not enough] and that, due to the circumstances [due to the urgency of the case; for the seriousness of the case; etc.], it is convenient to do it by extrajudicial means (cf. 1718 § 1, 3°). For all of which,

**[decision]**

DECREE that the criminal administrative procedure be initiated with the accused's immediate summons to appear, pursuant to c. 1720, 1°; and that this decree, together with all the documentation of the file that is not necessary for the criminal procedure, be filed in accordance with c. 1719.

**[place, date and signatures]**