DICASTERY FOR LEGISLATIVE TEXTS

PENAL SANCTIONS IN THE CHURCH

User guide
for Book VI
of the Code of Canon Law

VATICAN CITY 2023

Abbreviations

Art./Artt.	Article/s
AAS	*Acta Apostolicae Sedis*
can./cans.	canon/s
CIC	*Codex Iuris Canonici*
DDF	Dicastery for the Doctrine of the Faith
LG	*Lumen gentium*
n./nn.	number/s
NSST	*Norms on the Delicts Reserved to the Congregation for the Doctrine of the Faith*, as amended by the *Rescriptum ex Audientia SS.mi* dell'11 October 2021
SST	John Paul II, Apostolic Letter issued 'Motu Proprio' *Sacramentorum sanctitatis tutela* of 30 April 2001;
VELM	Francis, Apostolic Letter issued 'Motu Proprio' *Vos Estis Lux Mundi* del 25 March 2023

Presentation

By reason of their ministry, the Pastors of the People of God govern "the particular Churches entrusted to them as vicars and legates of Christ, by counsel, persuasion, and example, but also by authority and sacred power, which they use only for the edification of their flock in truth and holiness, remembering that the one who is greater must act as little, and the one who is the chief, as one who serves" (Lumen Gentium 27). In particular, pastors have the responsibility to correct conduct of the faithful that constitutes a delict insofar as it harms other faithful or endangers significant Church property.

With the Apostolic Constitution *Pascite gregem Dei* of 23 May 2021, Pope Francis promulgated the new Book VI of the Code of Canon Law, *De sanctionibus poenalibus in Ecclesia*, abrogating the previous Book VI *De sanctionibus in Ecclesia*, which had been promulgated, along with the other books of the Code by St John Paul II with the Apostolic Constitution *Sacrae disciplinae leges* of 25 January 1983. After decades of experience, the need was seen to prepare new penal legislation that would provide Ordinaries with more adequate instruments to enforce ecclesiastical discipline, prevent deviant conduct, restore the order of justice that had been violated, and repair the scandal that may have been caused.

The new Book VI in its first canon summarizes this dimension of the pastors' ministry by recalling that 'the one who presides in the Church, must safeguard and promote the good of the same community and of the individual faithful, with pastoral charity, with the example of life, with advice and exhortation and, if necessary, also with the infliction or declaration of penalties, according to the precepts of the law, which must always be applied with canonical equity, and bearing in mind the restoration of justice, the correction of the offender and the reparation of the scandal' (can. 1311 §2).

In cases where it becomes necessary, therefore, the exercise of pastoral ministry includes the implementation of punitive measures against the faithful under one's care, in order to correct criminal conduct, to restore the order of justice in the community, and to heal any consequences of the scandal caused. This is a task that the pastor must perform, with the aim of promoting the spiritual and material good of those involved in such conduct. It is a task that requires, in a particular way, the practice of the virtue of prudence, in order to accurately assess the particular circumstances of each case, and the virtue of fortitude to overcome resistance and obstacles, which arise in taking decisions that at times may be difficult, but which, nevertheless, are necessary for the good of the Community and of individuals.

Already during the revision of the *Codex Iuris Canonici* in 1917, the *Coetus studii de iure penali* manifested the intention, later unrealised, to prepare, after the promulgation of the Code, a sort of "penal directory" that would help Ordinaries, particularly those less competent in the juridical-canonical sphere, in the application of penal discipline.

The same intention was shared by the Commission that drafted the new Book VI, reserving to a later document the precise explanation of the norms for their correct application. As the revision work progressed, the features of this explanatory document were defined: it would not have any normative character - in the sense of adding new norms to those already promulgated - and would be intended primarily for non-law 'experts', as a *User Guide*.

The text, which is characterised by a discursive style, consists of three parts. The first two parts correspond to the two Parts of Book VI *De sanctionibus poenalibus in Ecclesia*: the first contains general notions and the other the treatment of individual delicts. They are supplemented by a third part devoted to the manner of implementation in cases where the competent authority considers it necessary to proceed extrajudicially to impose a penal sanction by decree.

This choice is motivated by the fact that, while Book VII of the Code of Canon Law clearly indicates the procedure to be followed

when choosing the judicial route to impose criminal penalties, the *modus agendi* to be followed when opting, on the other hand, for the administrative route is dealt with by the Code only in general terms. Thus, following the general norms of canon law and by analogy with other documents on the subject cited in the text, this third part has been drafted, which is considered useful for Ordinaries.

This third part, of course, has no binding value other than that of the norms under discussion.

It should be pointed out that this *User Guide* does not examine the norms regulating the procedures relating to *delicta reservata*, for which the competent Dicastery has already published a *Vademecum*, to which reference is made, nor those regulating extrajudicial processes within the competence of other Dicasteries of the Roman Curia.

Finally, there follows an Appendix, in which are collected some facsimiles of the main decrees and documents, to which reference is made in the text, and which the Ordinary is required to issue in the exercise of *ius puniendi*.

The Apostolic Constitution *Praedicate Evangelium* - promulgated by Pope Francis on 19 March 2022 - clearly emphasises that the Roman Curia and each Curial Institution, within the scope of its competencies, are an "instrument of service to the Successor of Peter for the benefit also of the Bishops, to whom they offer collaboration and support" (cf. Principles and Criteria, nos. 1, 3, 4). In this line, and in the exercise of its institutional activities, the Dicastery for Legislative Texts, gathering also the exhortations and indications of Pope Francis, offers this *User Guide* to the "Pastors and Superiors of the individual communities", in the hope that it may be of help to them in the

task, to which they are called by the ministry they carry out, of "judging delicts and imposing penalties, while respecting the rights of all those involved", for the implementation of justice.[1]

Vatican City, 31 May 2023

✠ FILIPPO IANNONE
Prefect

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Secretary

1 For greater fluency in the text of the *Guide*, which has a mainly explanatory function, the generic term of offence or delict has sometimes been used instead of delict, which is canonically more technical.

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PART ONE

GENERAL NOTIONS CONCERNING CANONICAL DELICTS AND PENALTIES

I. BASIS AND PURPOSE OF THE PENALTIES

1. *General notions concerning delicts and canonical penalties*

The first part of the new Book VI of the Code of Canon Law is of a general nature and presents the notions and common elements to keep in mind in the evaluation of the criminal conduct of every kind of delict. Therefore, when the ecclesiastical Authority is called to analyse a fact, he must necessarily base himself on what is contained in this part, both as regards the single elements present, as for the notions of a general nature. In fact, this part establishes what a canonical delict is, what the conditions are for a conduct to be considered a delict and who has the ability to define it as such; this part also determines who are subject to penal discipline and how, once the behaviour of the alleged offender has been examined, personal responsibility is measured; finally, it establishes which Authority is competent to define the delicts and connected penalties, to punish these behaviours, and finally, possibly, to remit the sanctions imposed.

2. *Foundation and purpose of the penalties* (Title I)

In the first title of Book VI, the foundations of the canonical penal system are established. Above all, it affirms the ability of the Church,

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1 Part I of Book VI is entitled "Delicts and penalties in general" (*De delictis et poenis in genere*) and comprises *CIC* 1311-1363. In the *CIC* this Part I is divided into six Titles, each of which contemplates different aspects of the elements to be taken into account in the assessment of offences.

2 Title I of Part I of Book VI of the Code is entitled "The punishment of delicts in general" (*De delictorum punitione generatim*) and comprises cans. 1311-1312. In addition to minor determinations in can. 1311 §1 and 1312 §3, the main change in Title I concerns the introduction *ex novo* of the entire §2 in canon 1311, which follows the text of canon 2214 §2 *Codex* 1917, taken from sess. XIII *de ref.*, Chapter I of the Council of Trent.

as a spiritual society of men and women who journey through history (cf. n. 3), to establish penal laws and to sanction criminal conduct. Furthermore, the close relationship that exists in the pastoral government of the Church between the use of charity and the use, when necessary, of punishment is affirmed here in order to obtain the three aims pursued by penal discipline: the reintegration of wounded justice, the amends of the person who committed the delict, and reparation for the scandal (cf. n. 4). Additionally, this same title also indicates the various categories of penal sanctions that exist in the Church, taking into account her spiritual characteristics (cf. n. 5).

3. *Necessity of penal sanctions to protect the essential goods of the Church* (can. 1311)

The Church, as a community structured on the basis of the Sacraments, has the inherent right to establish penal laws for its faithful, that is, to indicate that certain behaviours contrary to certain goods and values on which ecclesial society is founded are delicts, and so they must be punished. However, those who are not Catholics or do not enjoy the sufficient use of reason are not required to observe these penal laws (can. 11). The behaviour described as a delict is therefore punished because it represents conduct which, in addition to being personal sins in the moral order, damages essential aspects of the spiritual society which is the Church. The purpose of penal laws is to protect those essential goods on which society rests. In the case of the Church, the penal law limits itself to establishing a very limited number of delicts, trying to punish only the external conduct that the ecclesiastical Authority has identified as particularly harmful to the

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3 Can. 1311 - §1. The Church has its own inherent right to constrain with penal sanctions Christ's faithful who commit offences.

§2. The one who is at the head of a Church must safeguard and promote the good of the community itself and of each of Christ's faithful, through pastoral charity, example of life, advice and exhortation and, if necessary, also through the imposition or declaration of penalties, in accordance with the provisions of the law, which are always to be applied with canonical equity and having in mind the restoration of justice, the reform of the offender, and the repair of scandal.

communion of faith, sacraments, and regime, as well as to protect the rights of individuals and the order of justice.

In particular circumstances, situations may also arise which, on the margins of its penal dimension, require more decisive interventions by the Authority, for the protection of the ecclesial community. For this purpose, for example, special faculties have been conferred on the Dicastery for Evangelization, section for the first evangelization and the new particular Churches, as well as on the Dicastery for the Clergy.

4. *Pastoral dimension of the penal system* (can. 1311 §2)

For its part, the competent ecclesiastical Authority is bound to protect these goods and to govern pastorally the flock that has been entrusted to it. As the Apostolic Constitution *Pascite gregem Dei* recalls, following the conciliar text, "Bishops are thus called to govern by "counsel, exhortations, example, and even by their Authority and sacred power" (LG n. 27), inasmuch as charity and mercy demand that a father also make every effort to correct deviations". In fact, he must sometimes use the sanctions established by the common law of the Church, resorting to the imposition of penalties, always with fairness, and keeping in mind the three purposes that penal discipline pursues in the Church: the reintegration of damaged justice, the correction of the offender and also the reparation of the scandal or damage – even material – that the illicit behaviours have caused in the community (can. 1311 §2, can. 1347, 1361 §4).

Moreover, always to the extent possible, the Ordinary must try to use the penal discipline in a restorative way so that, in addition to achieving the purposes indicated above, the social tissue that the delict has torn apart is strengthened. This process includes, as far as possible, a path that provides for the reconciliation of the victim with the offender, providing not only for the repair of the damage caused, but also the reestablishment, as far as possible, of a human relationship, also thanks to the ecclesial reintegration of the offender.

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4 Cf. *Ibid.*

Another fundamental aspect to consider in this passage is the awareness, on the part of the ecclesiastical Authority, of the pastoral nature of the canonical penal sanction. In the apostolic constitution *Pascite gregem Dei*, the Holy Father recalls that "In the past, great damage was done by a failure to appreciate the close relationship existing in the Church between the exercise of charity and recourse — where circumstances and justice so require — to disciplinary sanctions. This manner of thinking — as experience has taught — could lead to tolerating immoral conduct, for which mere exhortations or suggestions are insufficient remedies. This situation often brings with it the danger that over time such conduct may become entrenched, making correction more difficult and in many cases creating scandal and confusion among the faithful. For this reason, it becomes necessary for Bishops and superiors to inflict penalties. Negligence on the part of a Bishop in resorting to the penal system is a sign that he has failed to carry out his duties honestly and faithfully, as I have expressly pointed out in recent documents, including the Apostolic Letters issued Motu Proprio *As a Loving Mother* (4 June 2016) and *Vos Estis Lux Mundi* (7 May 2019).

5. *Canonical penalties* (can. 1312)

The penalties established to punish delicts are appropriate to the spiritual nature of the Church and are the fruit of a centuries-old experience of communion. Therefore, these are generally penalties of a different nature from those established by the civil laws of the States.

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5 Can. 1312 - §1. The penal sanctions in the Church are: 1° medicinal penalties or censures, which are listed in cans. 1331-1333; 2° expiatory penalties, mentioned in can. 1336.

§2. The law may determine other expiatory penalties which deprive a member of Christ's faithful of some spiritual or temporal good, and are consistent with the Church's supernatural purpose.

§3. Use is also made of penal remedies and penances, referred to in cans. 1339 and 1340: the former primarily to prevent offences, the latter rather to substitute for or to augment a penalty.

In fact, they consist in the deprivation to the offender of some spiritual good typical of the Church, such as, for example, the right to access the sacraments, to exercise certain offices or functions, etc.

Even if all canonical penal sanctions pursue, among other things, the correction of the offender and, therefore, have a therapeutic purpose, following tradition, canonical penalty are classified into two categories: medicinal penalties, also called "censure", and expiatory penalties (can. 1312 §1).

As will be said later (cf. nn. 34 ff.), censures deprive the offender of access to certain ecclesial goods (mainly to the Sacraments) and have the primary purpose of promoting the amends of the offender, so that as soon as possible they can again participate in these goods of the Church.

Expiatory penalties (see nn. 42 ff.), on the other hand, are characterized by having as their objective the punishment and penance of the offender, independently of his inner repentance, seeking in addition to his amendment the re-establishment of justice and the reparation of the scandal. The expiatory penalties are indicated in can. 1336, even if the law, universal or, can establish other similar expiatory penalties, congruent with the supernatural end of the Church (cf. n. 5).

Even if all the penalties have as their purpose the amendment of the offender, those called "medicinal", that is, the censures established or declared in the external forum, have the following peculiarity: once the repentance of the offender has been ascertained (cf. n. 76) and having fulfilled the obligation of reparation or restitution (cf. nn. 80-81), he has the right to be absolved and released from penalty. The remission of censures in the internal forum follows its own rules, according to can. 1357 (cf. n. 75).

Instead, in the case of penalties called "expiatory", the repentance of the offender does not affect (at least directly) the cancellation of the penalty (cf. n. 5): it must be satisfied with the aim of purgation and reparation for the disorder and the scandal caused, although it is always possible, under due conditions, to obtain remission from the competent Authority (cf. nn. 72-84).

Furthermore, alongside the canonical penalties properly called (medicinal or expiatory), Church law has two instruments which are not properly considered canonical penalties, but rather have the function of supporting the penal system to protect one's goods (cf. n. 6). These are the so-called "penal remedies" and "penance" (see nn. 52-56).

The "penal remedies", mentioned in can. 1339, are generally used to prevent and avert the risk of delicts, preventing certain situations from irreparably deteriorating. To this end, the ecclesiastical Authority has various ways to go: He can issue warnings, reprimands, impose certain observances or give precise orders or commands with injunction of sanctions, called "penal precepts" (cf. nn. 5, 55).

Furthermore, in addition to the expiatory penalty imposed for a delict or, instead of the foreseen penalty, the Authority can prescribe to the offender, with the aim of personal spiritual correction, "penance", consisting in the duty to carry out certain works of piety and religion (cf. nn. 5, 56)

II. The two ways of establishing penal rules and sanctions

6. *The two ways of establishing penal norms and sanctions* (Title II)

This second title deals with the so-called objective sources of the canonical discipline, i.e., the "instruments" through which canon law establishes which behaviours are to be considered criminal, as they attack essential elements of the ecclesial society (e.g., the Sacraments, the Authority of the Church, the content of the Faith, etc.), and what should be the penalties to be imposed for these delicts. These instru-

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6 Title II of Part II of Book VI is entitled "Penal law and penal precept" (*De lege poenali ac de praecepto poenali*), and comprises cans. 1313-1320 *CIC*. The new texts have sought to set out more clearly the attributions of the inferior legislator (can. 1315 §2), correcting the previous dissuasive expressions on the use, whenever necessary, of the penal precept (can. 1319 §2).

ments are essentially reduced to two: the law, which has a general nature and is obligatory for those who are subject to the Authority that promulgates it, and the penal precept, a compulsory command given to a single subject or to a group of well identified people. In particular, the canons of this Title II indicate which Authorities can give penal laws and precepts, and how they must be established.

7. *How to act if the penal law has been changed over time* (can. 1313)

Criminal conduct must be judged and punished in accordance with the law in force at the time the delict was committed. It is therefore necessary that there is a previous law (or a penal precept) which has previously defined a certain conduct as a delict, and which also signals how it should be punished.

The only exception to this general criterion of penal law is represented by can. 1399 (cf. n. 164), which can be implemented only under the conditions and for the reasons established by the canon.

In this context, can. 1313 establishes the criterion on the basis of which to judge a delict if, after the commission of the delict, the reference law is changed; or how to proceed if, after a sentence has already been imposed, the law which punished the fact is changed. In both cases, can. 1313 states that the law most favourable to the offender must be applied. Consequently, if it is necessary to judge a delict committed before the new law, the law that is more favourable to the offender is applied (can. 1313 §1). Instead, in the case that the delict has already been judged, and the penalty imposed, this must eventually be modified if another law is promulgated which imposes a more lenient sanction or even suppresses it altogether (can. 1313 §2).

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7 Can. 1313 - § 1. If a law is changed after a delict has been committed, the law more favorable to the accused is to be applied.

§ 2. If a later law abolishes a law or at least the penalty, the penalty immediately ceases.

8. *How are penalties imposed*? (can. 1314)

Normally, canonical penalties are imposed with a judge's sentence, at the end of a penal judicial trial, or with a decree of the competent ecclesiastical Authority after an extrajudicial penal procedure. In the Church, however, unlike civil society, the ecclesiastical Authority possesses a power which also concerns the "internal forum" and, consequently, there are penal sanctions which are not inflicted by the ecclesiastical judge, but "automatic", i.e., "inflicted", as it were, by the subject's conscience, when he is aware of having broken a penal law which is linked to a penalty of this type. These penalties are called "*latae sententiae*", in contrast with the penalties "*ferendae sententiae*", which are the penalties imposed by sentence or decree by the judge or by the administrative Authority who judged the delict (can. 1314).

Another difference between the two consists in the moment in which the penalty begins to force the offender: the "*latae sententiae*" penalties bind the subject from the moment in which he becomes aware of the fact and its penal, as well as moral, consequence, of sin; while the penalties "*ferendae sententiae*" are binding from the moment in which they are inflicted by administrative decree or judicial sentence (cf. n. 18).

9. *Who can promulgate penal laws and with what rules must they be applied*? (can. 1315)

As is known, the ability to promulgate penal laws and to bind the persons over whom jurisdiction is exercised does not belong only to

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8 Can. 1314 - A penalty is ordinarily *ferendae sententiae*, that is, not binding upon the offender until it has been imposed. It is, however, *latae sententiae* if the law or precept expressly lays this down, so that it is incurred automatically upon the commission of a delict.

9 Can. 1315 - §1. Whoever has power to issue penal laws may also reinforce a divine law with a fitting penalty.

§2. A lower legislator, taking into account can. 1317, can also: 1° reinforce with a fitting penalty a law issued by a higher authority, observing the limits of his competence in respect of territory or persons; 2° add other penalties to those laid down for a certain offence in a universal law; 3° determine or make obligatory a penalty which a universal law establishes as indeterminate or discretionary.

the universal Legislator: any ecclesiastical Authority with legislative power, if the circumstances require it, has the ability to dictate penal laws for one's area of jurisdictional competence, identifying any new delicts that have not been foreseen in the Code and indicating the corresponding penalties, chosen both from those indicated in can. 1336, or among others established by the same Authority (cf. n. 5).

As can. 13 §1, particular laws, unless it is otherwise established, are presumed to be territorial, that is, in force and obligatory in the entire territory subject to the Authority which promulgated them. In concrete terms, penal laws issued by a Bishop, or an ecclesiastical authority below the supreme authority, are valid for that authority's territory. Those penal laws promulgated by a lesser authority bind only persons who have domicile or quasi-domicile in that place. These laws also extend to those who merely reside in that place.

To establish a new penal law, it is required, first, that the Authority which legislates accurately illustrates the external conduct, contrary to the ecclesial social order, which it intends to constitute as a delict, so as to allow the judge to verify with certainty that the delict occurred. The Authority must then associate a penal sanction to the criminal conduct described in this way, which can be punctually determined by the law, as has been said before, or left to the prudent evaluation of whoever must judge the fact (can. 1315 §3).

Another prerogative of the Authority which enjoys legislative power is the power to endow with a suitable canonical penalty the infraction of a divine law which is not punished in the Code (can. 1315 §1). Analogously, he can also add new penalties to those already provided for by the universal law, and also make mandatory, that is, necessarily punishable, penalties that the universal law had established only in an indeterminate way or as optional (can. 1315 §2).

It is not possible, however, for penal laws to provide for every kind of infraction against the social order. In reality, penal laws - the uni-

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§3. A law can either itself determine the penalty or leave its determination to the prudent decision of a judge.

versal ones of the Code and those established by the legitimate Authority in the respective ambit - define certain external behaviours of particular importance as a delict, while many other behaviours contrary to the ecclesial good must be equally correct, even if not being properly penal offences. The Authority is required, in such cases, to adopt "disciplinary measures", which are of a different nature from the canonical penalties (Cf. n. 191).

10. *What is the task of the Bishops of neighbouring territories in establishing and applying penal laws*? (can. 1316)

Although the legislative power, and therefore the ability to establish particular penal laws (cf. n. 9) under the Supreme Pontiff, belongs mainly to the diocesan Bishops, it is necessary that the Bishops of the same region or nation act in communion, if it is necessary to promulgate penal laws. In fact, the dissemination of news regarding criminal conduct easily goes beyond the limits of ecclesiastical circumscriptions and brings with it a strongly negative impact in other communities, for which the Pastors find themselves in the duty to proceed in particular harmony, avoiding the bewilderment between the faithful which would inevitably arise in the event of non-harmonious procedures between them.

For this reason, whenever the Episcopal Conferences or other meetings of Bishops feel the need to issue penal norms for the entire territory in question, they can request the Holy See, according to can. 455 §1, the necessary power to issue norms of a binding nature through appropriate general decrees, setting up new penal offences or punishing with greater rigor offences which in that specific place are particularly serious or frequent, in conformity with can. 1315 §2; the same can happen, if it proves necessary and after having requested the same faculties, also at a lower level of ecclesiastical Region or Province.

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10 Can. 1316 - Diocesan Bishops are to take care that as far as possible any penal laws are uniform within the same city or region.

11. *Can the one who has legislative power in the Church enact penal laws at will*? (can. 1317)

Since these are restrictive and so-called "hateful" norms, the canonical order asks those who enjoy legislative power in the Church to use with extreme prudence the ability to introduce new penal laws or to stiffen existing precepts. This should be done only when it is "really necessary", according to the prudent judgment of the Shepherd. Can. 1317 therefore prescribes a balanced use of canonical penalties and the configuration of new delicts.

The canonical discipline leaves to the Pastors the evaluation of the circumstances which may require the creation of new delicts and the imposition of new penalties. However, there is a limit: the law has established a clear reserve for the penalty of dismissal from the clerical state, prescribing that it cannot be established as a penalty by a particular law, by the legislator lower than the Supreme Authority (can. 1317), nor imposed with a penal precept (can. 1319 §1).

12.*Limiting the further use of latae sententiae penalties or excommunications* (can. 1318)

In addition to the general request for moderation on the part of the Bishop in making use of the ability to dictate particular penal laws, can. 1318 underlines the need to use even greater moderation in establishing automatic, *latae sententiae* penalties by particular law, and particularly in imposing the penalty of excommunication.

Seeking to ensure the necessary certainty that justice requires, the penal law tries to operate on objective and external data. Therefore, canon law tries to restrict as much as possible the recourse to "*latae*

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11 Can. 1317 - Penalties are to be established only in so far as they are really necessary for the better maintenance of ecclesiastical discipline. Dismissal from the clerical state, however, cannot be laid down by a lower legislator.

12 Can. 1318 - *Latae sententiae* penalties are not to be established, except perhaps for some outstanding and malicious offences which may be either more grave by reason of scandal or such that they cannot be effectively punished by *ferendae sententiae* penalties; censures, however, especially excommunication, are not to be established, except with the greatest moderation, and only for offences of special gravity.

sententiae" penalties, due to the uncertainty that they bring with them and also because they can lead to a lack of objectivity due to the fact that they are subjected to the " self-assessment" of the offender's conscience. Therefore, to the ecclesiastical Authority, which deems it necessary to establish a particular penal law, is required to reserve this type of sanctions "*latae sententiae*" only for cases of malicious delicts capable of causing serious scandal and which cannot be punished externally, with the normal "*ferendae sententiae*" penalties imposed by the judge or by the Ordinary.

In any case, the law commands the local ecclesiastical Authority, which deems it necessary to issue a particular law for its own circumscription, not to constitute a "*latae sententiae*" penalty of excommunication except with great moderation and in cases of special gravity (can. 1318).

13.*What is a penal precept?* (can. 1319)

Whoever has executive power over a community of the faithful, i.e., the Bishop and those who have the condition of Ordinary according to can. 134, can also impose directly on a person – or even on several well-identified people – something (a conduct) to do or to omit, inflicting a penalty in the case of disobedience. Unlike general laws which oblige everyone, these "penal precepts" concern only the persons to whom they are addressed (can. 49), even if they still have the same binding force as a law (can. 52). To ensure the necessary certainty, the law requires that these precepts - which can never impose a perpetual penalty (can. 1319 §1) and only in exceptional cases must impose *latae sententiae* penalties (can. 1319 §2) - are carried out by the Authority observing all the requisites that the law establishes in can. 48 ff. to dictate a singular decree: a) first obtain the appropriate

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13 Can. 1319 - §1. To the extent to which one can impose precepts by virtue of the power of governance in the external forum in accordance with the provisions of cans. 48-58, to that extent can one also by precept threaten determined penalties, with the exception of perpetual expiatory penalties.

§2. If, after the matter has been very carefully considered, a penal precept is to be imposed, what is established in cans. 1317 and 1318 is to be observed.

notices and information as well as eventual proofs (can. 50), b) in writing and summarily explaining the reasons for the precept (can. 51).

As will be explained later, in establishing a penal precept, the Authority can also concretely indicate some circumstances which, possibly, could modify the subject's responsibility in the event of disobedience, either by exempting him from the penalty, or even by extenuating or aggravating his responsibility (cf. n. 29).

14. *Dependence of members of Institutes of Consecrated Life and Societies of Apostolic Life on the local Ordinary in penal matters* (can. 1320)

As has been said (cf. n. 9) penal laws and, in general, the penal jurisdiction of the diocesan Bishop apply to those who have domicile or quasi-domicile or current residence in the territory, regardless of the possibility that the same subjects are also bound to the personal jurisdiction of another Ordinary.

As regards religious and all other consecrated persons, to the extent that they are subject to the local Ordinary, they can also be constrained by penal precepts (can. 1320), in addition to the local penal law (cf. cans. 12 §3, 13 §1). In the same way, the clerics of secular institutes incardinated in the institute and assigned to the pastoral works of the same depend on the Bishop (cf. can. 715 §2).

III. Responsibility of the offender and its assessment

15.*Responsibility of the offender and its assessment* (Title III)

The third title mainly contains general criteria for assessing the personal responsibility of the subject who has committed a delict and

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14 Can. 1320 - The local ordinary can coerce religious with penalties in all those matters in which they are subject to him.

15 Title III of Part I of Book VI of the Code is entitled "The subject liable to penal sanctions" (*De subjecto poenalibus sanctionibus obnoxio*) and comprises cans. 1321-1330. The main innovations now introduced are the explication of the presumption of innocence (can. 1321 §1), considering intoxication provoked as an aggra-

for identifying the degree of imputability, i.e., the subjective condition for a person to be liable for a penal offence committed. The starting point with regard to the subject deemed culpable of certain behaviours is very important: the first step, in fact, is to presume the innocence of this subject until there is proof that makes the contrary manifest (cf. n. 17); in a second step, some requisites necessary for a delict to be considered committed are analysed (cf. n. 16, 30-32). Finally, the canons proceed to indicate which are the circumstances which can exclude the punishment of the subject (cf. n. 21), and which instead are capable of reducing or increasing his responsibility for the delict committed (cf. n. 24, 27).

16. *Who are penal laws addressed to? Who is required to observe them?* (can. 1321)

Penal laws are laws given and promulgated by ecclesiastical Authority, consequently they are purely ecclesiastical laws, that is, not of divine right. The observance of these laws "bind those who have been baptized in the Catholic Church or received into it, possess the sufficient use of reason, and, unless the law expressly provides otherwise, have completed seven years of age." (can. 11).

Furthermore, the Catholic faithful themselves are subject to penal laws of the Church in different ways, according to their own condition. In fact, lay people, clerics, and consecrated persons have different canonical obligations and, consequently, are subject in different

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vating circumstance (can. 1326, 4°), and the provision for inflicting punishments *ferendae sententiae* as an alternative to not having a *latae sententiae* punishment (can. 1324 §3).

16 Can. 1321 - §1. Any person is considered innocent until the contrary is proved.

§2. No one can be punished unless the commission by him or her of an external violation of a law or precept is gravely imputable by reason of malice or of culpability.

§3. A person who deliberately violated a law or precept is bound by the penalty prescribed in that law or precept. If, however, the violation was due to the omission of due diligence, the person is not punished unless the law or precept provides otherwise.

§4. Where there has been an external violation, imputability is presumed, unless it appears otherwise.

ways to ecclesiastical laws, including those of a penal nature: there are, in fact, penal laws that concern clerics and also consecrated and, instead, do not punish the behaviour of the lay faithful, or punish them with less intensity.

Having clarified all this, the first point that the Authority must clarify in the face of a criminal conduct is to verify the degree of punishability of the subject: that is, to understand the level of criminal intentionality that the accused had in committing the delict, and consequently, to what extent it is necessary to punish him. Secondly, the ecclesiastical Authority will have to verify the existence of the necessary requisites for a delict to be considered committed and then, take into account the various circumstances that have occurred which can subjectively modify the culpability of the offender.

In summary:

– the presumption of innocence of the subject must be taken as a starting point, until the contrary is proven. This represents a fixed point, which only the evidence of the contrary can modify (cf. n. 17);

– then, there must be the necessary conditions for the existence of a delict. These conditions are as follows: that there is an external violation of a penal law, and that it is gravely imputable to the subject for having acted (or not acting when he should have done so) with malice or culpability (cf. n. 18);

– having verified these elements, it is necessary to subsequently evaluate the existence or not of circumstances that modify the culpability of an offender and his capacity to commit a delict: the exemptions, mitigating factors, aggravating factors, as well as the degree of execution and improvement of the criminal act (cf. n. 30).

The universal law establishes, as will be explained below, a list of circumstances which exempt the subject from any penalty (cf. nn. 21-22), or which mitigate his culpability and the consequent penalty (cf. n. 23), and also of those which eventually aggravate both (cf. n. 28). However, even the particular legislator (the diocesan Bishop and equivalent), within his own ambit, can establish other extenuating or aggravating circumstances, both of a general nature - for all delicts - and for individual delicts. Likewise, the Authority that establishes a

penal precept can also indicate to the person to whom it is addressed any aggravating or extenuating circumstances (cf. n. 29).

17. *The Presumption of innocence of the accused and the need for proof to the contrary* (can. 1321 §1)

The presumption of innocence of the accused person is a general principle of every system of law, aimed at protecting the image of people in the face of any attempts to illegitimately tarnish their good reputation. This principle, traditionally present in the life of the Church, responds above all to the need for justice and also because charity demands it. However, in the new penal discipline it was deemed necessary to underline this cardinal principle of the penal system, enunciating it more clearly, in a specific paragraph: "anyone is considered innocent until the contrary is proven" (can. 1321 §1).

Each Authority, therefore, is required to start its assessments of the cases reported from this perspective, decisively removing any kind of prejudice which, in addition to being unjust, would deprive it of the necessary impartiality to judge.

Naturally, despite the existence of this presumption of innocence, the Authority will be required to initiate an investigation if it receives criminal reports. However, having to adopt disciplinary measures (different in nature of the precautionary measures [Cf. nn. 191-206]) in certain circumstances against the reported subject, the nature of these measures must agree with the extent of the certain data received, since otherwise the presumption of innocence that the law prescribes would be unduly circumvented.

18. *Conditions required for the constitution of a delict* (can. 1321 §2)

In assessing possible complaints, the Authority is required first of all to verify, as stated above, whether two circumstances are present that are absolutely necessary for a canonical offence to occur: firstly, an *external violation* of a penal law, and secondly, that this violation is

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17. Cf. *Ibid.*

18. Cf. *Ibid.*

gravely imputable to the subject, through *wilful intent* or through *negligence*.

For there to be a delict, in fact, an *external violation of a penal law* is essential, that is, a failure to comply with the prescriptions of a law in which the legislature has clearly indicated a certain conduct as a delict, liable to be punished (can. 1321 §2). Consequently, internal acts are not punishable. While they can be contrary to the moral law and can certainly lead to sin, only external acts can be punished. Moreover, a legislator must promulgate a law that specifically prohibits a certain kind of external conduct and threatens to punish that same behaviour, in order for an external act to be subject to a penalty.

An exception, however, is established by the extraordinary conditions laid down in Canon 1399: this canon, which has a long tradition in the Church (cf. n. 164), is an exception to the principle of penal legality, since it allows the Authority to punish with a penalty considered just other conduct not provided for as a delict, but only if "the special gravity of the violation demands punishment and there is an urgent need to prevent or repair scandals" (Can. 1399).

In addition to the external violation needed to speak of a delict, it is necessary for the subject to be gravely imputable through *wilful intent* or *negligence*. In order to understand the difference between the two, the definitions given in the 1917 *Codex* are useful: *wilful intent* was defined as the deliberate intention to violate the law (Canon 2200 *Codex* 1917), while *negligence* was understood as ignorance of the law or omission of due diligence (Canon 2199 *Codex* 1917). These definitions are still valid today.

Both in cases of *intent* and in cases where only *negligence* is present, the law provides for the punishment of acts *committed externally* (for verbal offences, cf. n. 32), whereas *violations* committed through lack of due diligence are not punishable, unless the law or the precept states otherwise (can. 1321 §3). A necessary clarification is indicated in the motu proprio *As a Loving Moth*er of on 4 June 2016, which nevertheless provided for the possibility of removing a bishop for negligence in the event that he has failed to carry out acts of due governance: this is, however, a disciplinary measure, and not a penal one.

19. *Presumption of principle on the imputability of persons* (can. 1321 §4)

A subject is said to be imputable when he possesses the necessary qualities to be fully responsible for his own acts and, therefore, possesses all the conditions and capacity to be punished. As a starting point, the law assumes that the subject who carries out the external violation of the law is imputable and fully aware of his own actions (can. 1321 §4): of course, this may not happen, and therefore it will be necessary to prove it at the time to evaluate the various circumstances that contribute to the execution of the criminal act.

20. *When is a subject not imputable?* (can. 1322)

"Those who habitually lack the use of reason" are not imputable: they, even in the hypothesis in which they have violated the law (or the precept) in periods of lucidity, that is when they appeared sane, are considered by law not imputable. In the same way, as has already been said, persons not subject to merely ecclesiastical laws (can. 11) are also not imputable, i.e., non-Catholics, those who do not habitually enjoy use of reason, and minors of seven years, unless the law provides otherwise in the specific case.

21. *Circumstances that prevent the application of a penalty* (can. 1323)

Exemptions are those circumstances, strictly established by law, which exclude the application of the penalty because it is believed

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19. Cf. *Ibid*

20. Can. 1322 - Those who habitually lack the use of reason are considered to be incapable of a delict, even if they violated a law or precept while seemingly sane.

21. Can. 1323 - No one is liable to a penalty who, when violating a law or precept: 1° has not completed the sixteenth year of age; 2° was, without fault, ignorant of violating the law or precept; inadvertence and error are equivalent to ignorance; 3° acted under physical force, or under the impetus of a chance occurrence which the person could not foresee or if foreseen could not avoid; 4° acted under the compulsion of grave fear, even if only relative, or by reason of necessity or grave inconvenience, unless, however, the act is intrinsically evil or tends to be harmful to souls; 5° acted, within the limits of due moderation, in lawful self-defence or defence of another

that the subject has not properly committed a delict or that his action could be justified. The exempting circumstances, which exclude the application of the penalty, are considered only if they occur at the very moment in which the delict is committed. There are seven such circumstances (can. 1323):

1°) not having reached the age of sixteen (can. 1323, 1°);

2°) to be unaware, without fault, of violating a law or a precept, or to act only by inadvertence or error (can. 1323, 2°). However, if the ignorance were crass or supine it could in no case be considered as exempt, since in such a situation there would indeed be added an element of culpability for having contempt of the law (cf. n. 26);

3°) one who reacts before an external force which can hardly be resisted, or due to a fortuitous event neither foreseen by the subject nor foreseeable in fact (can. 1323, 3°). In this regard, it should be kept in mind that, in certain circumstances, "psychic violence" could be considered analogically with physical violence, for example there may exist certain degrees of manipulation capable of annulling the use of reason by preventing punishability;

4°) whoever acted out of grave fear, even if only perceived as such by himself, in personal situations of need or grave difficulty, unless such conduct was not intrinsically bad or harmful to souls (can. 1323, 4°): in this case, these circumstances go from being exempt to merely extenuating circumstances (cf. n. 23);

5°) if the subject acted in legitimate defence, before an unjust aggressor, to defend himself from an act against himself or against a third party. The defensive reaction, however, must be proportionally moderate, and it must be an aggression that is unjust, in itself, or due to the means and modalities employed (can. 1323, 5°);

6°) when the subject, at the time of the commission the delict, was devoid of the use of reason. However, this failure must be limited to the time of the delict, because if it were more general it would fall

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against an unjust aggressor; 6° lacked the use of reason, without prejudice to the provisions of cans. 1324 §1 n. 2 and 1326 §1 n. 4; 7° thought, through no personal fault, that some one of the circumstances existed which are mentioned in nn. 4 or 5.

under the condition of lack of imputability (cf. n. 20). In the new regulation, unlike that of 1983, drunkenness is no longer considered a mitigating factor, and can even be aggravating if used as a stimulus to commit the delict (cf. n. 27);

7°) if the subject, through no culpability of his own, erroneously believed that he was faced with circumstances which instilled serious fear or which led to a reaction in self-defence. Here too, if the error were somehow culpable, the exemption would only be transformed into a mitigating factor (cf. n. 23).

22. *When does it become necessary to evaluate exempting circumstances?* (can. 1323)

The presence of exempting circumstances is the first issue that must be evaluated by the Authority when he has to judge an objectively criminal conduct. However, except for the first of the circumstances indicated, that concerning the subject's age, all the other circumstances usually come to light during the investigation or even during the penal procedure. Consequently, the possible presence of such circumstances, except that of age, must not stop the initiation of the procedures prescribed as dutiful by can. 1341 for the ecclesiastical Authority.

23. *What are extenuating circumstances and what do they consist of?* (can. 1324)

Extenuating circumstances are those circumstances established by law which, without completely removing responsibility, can reduce

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22. Cf. *Ibid.*

23. Can. 1324 - §1. The perpetrator of a violation is not exempted from penalty, but the penalty prescribed in the law or precept must be diminished, or a penance substituted in its place, if the delict was committed by: 1° one who had only an imperfect use of reason; 2° one who was lacking the use of reason because of culpable drunkenness or other mental disturbance of a similar kind, without prejudice to the provision of can. 1326 §1 n. 4; 3° one who acted in the heat of passion which, while serious, nevertheless did not precede or hinder all mental deliberation and consent of the will, provided that the passion itself had not been deliberately stimulated or nou-

the gravity of the fault committed by the offender. Even if, in principle, such circumstances are strictly determined in can. 1324, the one who has to judge is permitted to consider other possible circumstances which in the same way may have attenuated the gravity of the act performed (can. 1324 §2).

In order to be taken into account, extenuating circumstances must occur at the very moment in which the delict is committed. These circumstances can be reduced to ten (can. 1324), some of which substantially correspond to the circumstances indicated above as exemptions, unlike which, however, present a greater voluntary nature on the part of the subject:

1°) imperfect use of reason, due to illnesses which affect the use of reason, but do not totally exclude it (can. 1324 §1, 1°);

2°) culpability of drunkenness or a similar situation (e.g., use of narcotic substances), provided, however, that this was not caused deliberately in order to commit the delict (can. 1324 §1, 2°);

3°) serious heat of passion, which in any case has not completely prevented an evaluation of the criminal act and has not been intentionally provoked to commit the delict (can. 1324 §1, 3°);

4°) in the case of a minor under the age of 18 who has however completed 16 years of age (can. 1324 §1, 4°);

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rished; 4° a minor who has completed the sixteenth year of age; 5° one who was compelled by grave fear, even if only relative, or who acted by reason of necessity or grave inconvenience, if the delict is intrinsically evil or tends to be harmful to souls; 6° one who acted in lawful self-defence or defence of another against an unjust aggressor, but did not observe due moderation; 7° one who acted against another person who was gravely and unjustly provocative; 8° one who erroneously, but culpably, thought that some one of the circumstances existed which are mentioned in can. 1323 nn. 4 or 5; 9° one who through no personal fault was unaware that a penalty was attached to the law or precept; 10° one who acted without full imputability, provided it remained grave.

§2. A judge can do the same if there is any other circumstance present which would reduce the gravity of the delict.

§3. In the circumstances mentioned in §1, the offender is not bound by a *latae* sententiae penalty, but may have lesser penalties or penances imposed for the purposes of repentance or repair of scandal.

5°) in the case of a person who acted out of grave fear, even if only relatively perceived as such, or out of necessity or grave inconvenience (can. 1324 §1, 5°), and it was an intrinsically evil action or with damage to souls;

6°) whoever acted in legitimate defence against an unjust aggressor, but without the due moderation (can. 1324 §1, 6°);

7°) who reacted against an unjust and grave provocation (can. 1324 §1, 7°);

8°) who by culpable error believed to suffer grave fear or unjust aggression.

9°) he with no personal fault was unaware that a canonical penalty was attached to the law or to the precept (can. 1324 §1, 9°). Of course, the extenuating circumstance does not arise if the subject has acted with grave or supine ignorance (can. 1325);

10°) whoever acted without full imputability, even if in any case serious (can. 1324 §1, 10°).

24. *How do extenuating circumstances affect latae sententiae penalties*? (can. 1324 §3)

One of the consequences of the existence of extenuating circumstances in the commission of a delict is to prevent the configuration of a penalty *latae sententiae*, if this were the sanctioned penalty. In fact, in order for a *latae sententiae* penalty to actually be generated, penal law demands particular requirements so as to ensure the indispensable legal certainty.

Consequently, in order to ensure the necessary certainty, the legislator has established that if extenuating circumstances, i.e., circumstances that alter the culpability of the subject and his criminal responsibility, are present in the case, *latae sententiae* penalties do not operate in any way. The presence of extenuating circumstances therefore excludes *latae sententiae* penalties altogether.

Therefore, in order not to leave unpunished, because of the extenuating circumstances, criminal actions whose punishment would be *latae sententiae*, the new canon 1324 §3 provides - which the previous discipline did not do - the possibility of inflicting on the offender in

such circumstances "milder punishments" or penances for the purpose of repentance or reparation of the scandal (canon 1324 §3).

25. *When and how should extenuating circumstances be assessed*? (can. 1324)

The assessment of extenuating circumstances takes place only during the judicial or extrajudicial process. In fact, this is the meaning of the assessment of extenuating circumstances: to take them into account in order to define the penalty to be imposed on the subject, so that it is proportionate not only to the gravity of the act, but also to the person's responsibility. If certain circumstances are assessed as mitigating, the effect will be that of a mitigated penalty, compared to what is prescribed by law; it will also be possible to replace this penalty with a penance (cf. n. 5) if this is deemed convenient, and if the risk of injustice or scandal is excluded (cf. n. 81).

The Authority that must judge, in the judicial or administrative way shall also evaluate as extenuating circumstances other situations which, according to what emerged in the sanctioning procedure, could otherwise mitigate the gravity of the delict committed.

If, as mentioned earlier, these are offences sanctioned with *latae sententiae* penalties which, due to extenuating circumstances, are not applied, the Authority, given that the *latae sententiae* penalty (cf. n. 37) is no longer applicable (but not the antisocial character of the behaviour), must evaluate whether it is necessary to impose other more lenient penalties or "apply penance for the purpose of repentance or reparation for the scandal" (can 1324 §3).

26. *In what cases is ignorance of penal law excusable*? (can. 1325)

The canonical system is one of the few legal systems which, when punishing delicts, asks the judge to evaluate whether and to what extent the subject, in committing the delict, was ignorant of the penal

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25. Cf. *Ibid.*

26. Can. 1325 - Ignorance which is crass or supine or affected can never be taken into account when applying the provisions of cans. 1323 and 1324.

law; based on this assessment, the judge is called to consider the imputability and consequently the imposition of the penalty differently. As mentioned earlier, ignorance can in some cases even be a reason to exempt from a penalty (cf. n. 21) and in other cases it can be a mitigating cause of responsibility, consequently having to moderate the penalty to be inflicted (cf. n. 23).

However, when the ignorance is culpable, i.e., when the person was bound to know the law and deliberately failed to comply with it, in this case, even if there were, the ignorance would be irrelevant and to be disregarded. These are the cases of *crass ignorance* and *supine ignorance* (Canon 1325). *Crass ignorance* arises from grave negligence in knowing what the subject is obliged to know, while supine ignorance occurs when the subject has disregarded this obligation out of superficiality or in order to attend to other business. On the other hand, *supine ignorance* is said to be that of one who intentionally remains in this state of ignorance, not wishing to inform himself precisely in order to commit the delict more easily or to find some excuse or justification for it.

27. *What is the role of aggravating circumstances*? (can. 1326)

On the contrary, in committing offences there may also be factors and circumstances which increase the culpability of the subject, even

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27. Can. 1326 - §1. A judge must inflict a more serious punishment than that prescribed in the law or precept when: 1° a person, after being condemned, or after the penalty has been declared, continues so to offend that obstinate ill will may prudently be concluded from the circumstances; 2° a person who is established in some position of dignity, or who, in order to commit a delict, has abused a position of authority or an office; 3° a person who, after a penalty for a culpable offence was constituted, foresaw the event but nevertheless omitted to take the precautions to avoid it which any careful person would have taken; 4° a person who committed a delict in a state of drunkenness or other mental disturbance, if these were deliberately sought so as to commit the delict or to excuse it, or through passion which was deliberately stimulated or nourished.

§2. In the cases mentioned in §1, if the penalty constituted is *latae* sententiae, another penalty or a penance may be added.

§3. In the same cases, if the penalty constituted is discretionary, it becomes obligatory.

if it is objectively the same delict. These are the so-called aggravating circumstances and can. 1326 indicates, in a general way, four:

1°) recidivism in committing offences, i.e., when, once convicted or sentenced, the person still persists in committing the delict and must be tried again. Recidivism suggests in the offender a pertinacity and an unwillingness to redeem himself. However, there would be a specific recidivism, if the offender commits the same type of offence for which he was punished (can. 1326 §1, 1°);

2 °) it is also considered an aggravating circumstance if the delict is committed by one who, in the Church, is constituted in dignity, or by one who used his authority or his office to commit the delict (can. 1326 §1, 2 °);

3°) the behaviour of those who, in delicts for which fault is also punished (cf. n. 18), the subject foresaw the event and "nevertheless omitted the precautions to avoid it, as any diligent person would have done" is also aggravating (can. 1326 §1, 3°);

4°) finally, the case in which the delict was committed by the offender who, precisely in order to carry out the delict, has artfully procured a state of confusion or excitement (for example, having voluntarily sought a perturbation of the mind or drunkenness) by voluntarily exciting or favoring the passionate state (can. 1326 §1, 4°).

28. *How should the Authority assess aggravating circumstances*? (can. 1326)

The assessment of the aggravating circumstances, as happens with most of the situations that affect the imputability of the subject, can

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28. Can. 1326 - §1. A judge must inflict a more serious punishment than that prescribed in the law or precept when: 1° a person, after being condemned, or after the penalty has been declared, continues so to offend that obstinate ill will may prudently be concluded from the circumstances; 2° a person who is established in some position of dignity, or who, in order to commit a delict, has abused a position of authority or an office; 3° a person who, after a penalty for a culpable offence was constituted, foresaw the event but nevertheless omitted to take the precautions to avoid it which any careful person would have taken; 4° a person who committed a delict in a state of drunkenness or other mental disturbance, if these were deliberately sought so as to

only take place during the sanctioning procedure and is essential for deciding which proportional penalty to impose (cf. n. 66).

It should also be kept in mind that, in some cases, the presence of certain circumstances, rather than being aggravating of a delict, constitute another type of delict, which the law punishes with greater severity. For example, according to can. 1398, the delict of child abuse committed by a cleric (cf. nn. 159-161) is different from that committed by someone who is not (cf. n. 162).

For the assessment of aggravating circumstances, the new penal law establishes two important specific characteristics, which those called to judge must keep in mind, and which were not equally considered in the previous penal law.

First, if aggravating circumstances contribute to the commission of the delict, the judge is required to punish more seriously than established by law or penal precept. The novelty lies in the fact that while before the law limited itself to authorizing the judge to punish with greater severity (*puniri potest*) now, however, can. 1326 §1 imposes on the judge the duty to do so (*puniri debet*);

Furthermore, a second novelty of the penal law in the presence of aggravating circumstances is the transformation into obligatory of the penalties that the law had left as optional punishments, in the judgment of the Authority (can. 1326 §3). In such cases, the judge must necessarily impose a penalty.

To all this, it must be added that, in the case of certain delicts, the same law provides for specific aggravating circumstances. For example, if the same offence is committed by a cleric, the penalty can be higher and lead to dismissal from the clerical state (cf. nn. 95, 125, 157).

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commit the delict or to excuse it, or through passion which was deliberately stimulated or nourished.

§2. In the cases mentioned in §1, if the penalty constituted is *latae* sententiae, another penalty or a penance may be added.

§3. In the same cases, if the penalty constituted is discretionary, it becomes obligatory.

29. *Can particular law define other circumstances that modify imputability?* (can. 1327)

Whoever has legislative power in the Church and can dictate new penal laws within the ambit of his own jurisdiction (cf. n. 9) can also establish new mitigating, exempting or aggravating circumstances, in addition to those indicated in the Code, both of a general nature and for individual delicts.

In the same way, whoever has executive power, and can dictate "penal precepts" (cf. n. 13), can also indicate new specific mitigating, exempting or aggravating circumstances of the penalty indicated in the aforesaid precept.

30. *How to punish a delict not fully committed* (can. 1328)

It is believed that a delict is committed when the offender performs all the actions necessary to carry it out and the criminal effect is produced. However, on certain occasions, the delict does not reach perfection, that is, it does not take place, both for causes independent of the will of the offender, and because he had only partially performed the acts necessary to complete the delict. The different circumstances, which can cause the delict not actually to be committed, receive various denominations depending on the actual result and the

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29. Can. 1327 - A particular law may, either as a general rule or for individual offences, determine other excusing, attenuating or aggravating circumstances, over and above the cases mentioned in cans. 1323-1326. Likewise, circumstances may be determined in a precept which excuse from, attenuate or aggravate the penalty constituted in the precept.

30. Can. 1328 - §1. A person who has done or omitted something in order to commit a delict and yet, contrary to his or her intent, did not commit the delict is not bound by the penalty established for a completed delict unless the law or precept provides otherwise.

§2. If the acts or omissions are by their nature conducive to the execution of the delict, however, their perpetrator can be subjected to a penance or penal remedy unless the perpetrator voluntarily ceased from carrying out the delict which had been initiated. If scandal or some other grave damage or danger resulted, however, the perpetrator, even if he or she voluntarily desisted, can be punished with a just penalty, although one lesser than that established for a completed delict.

will of the subject: attempted delict, frustrated delict, impossible delict, desisted delict, etc. The Code of Canon Law brings all these different situations into two main categories: the attempt to commit a delict and the voluntary desistance.

The attempted delict always occurs when, for reasons beyond the control of the subject, the delict is not effectively committed. In such cases the subject is not bound to the established penalty unless the law or precept establishes otherwise (can. 1328 §1). However, if the acts or omissions performed by the offender by their nature have the force to lead the delict to its fulfilment (can. 1329 §2), the person can be subjected to a penance (cf. n. 56) or penal remedy (see n. 55).

The other envisaged situation occurs when the delict has not been committed due to the desistance of the subject: the latter, after starting to carry out the acts to commit the delict, voluntarily decides not to go ahead and renounces to complete the delict. In such circumstances, the law requests that the subject not be punished, unless the law or precept provides otherwise.

However, in both cases, if scandal or other serious damage or danger resulted from the behaviour implemented, the perpetrator "can be punished with a just penalty, although one lesser than that established for a completed delict." (can 1328 §2).

31. *How to evaluate the participation of several subjects in a delict*? (can. 1329)

Sometimes in the execution of the same delict several subjects intervene who, sometimes at different moments or with a different degree of responsibility, carry out the criminal acts necessary, even in

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31. Can. 1329 - §1. If *ferendae sententiae* penalties are established for the principal perpetrator, those who conspire together to commit a delict and are not expressly named in a law or precept are subject to the same penalties or to others of the same or lesser gravity.

§2. Accomplices who are not named in a law or precept incur a *latae sententiae* penalty attached to a delict if without their assistance the delict would not have been committed, and the penalty is of such a nature that it can affect them; otherwise, they can be punished by *ferendae sententiae* penalties.

different ways, for the execution of the delict. Can. 1329 establishes how the Authority must evaluate the different forms of concurrence of several subjects in the delict, summarizing the various forms of concurrence with reference to the nature of the penalty envisaged.

Since these are *ferendae sententiae* penalties, those who by mutual agreement - even if they are not named in the law or in the precept - contribute to the commission of the delict are subject to the same penalties established by law, or to others equal or less serious, in the opinion of the Authority, which will have to evaluate the respective degree of participation and fault, assessing for each any mitigating, mitigating and aggravating circumstances.

Instead, since one is dealing with *latae sententiae* penalties, those who are necessary for the perfection of the delict are considered to have incurred the same penalty, in addition to the principal subject; that is, those without whose positive work it would not have been possible to commit the delict. If, due to their nature, the penalty cannot be applied to such people – for example, because it is a type of penalty that only concerns clerics – whoever has participated in this necessary competition can be punished by the Authority with another penalty *ferendae sententiae* (can. 1329 §2).

32. *Peculiarities of delicts consisting of verbal statements* (can. 1330)

Some delicts envisaged by the penal discipline - such as heresy, apostasy, and others - may consist of verbal declarations or manifestations of will that do not require the execution of works. For such cases, can. 1330 indicates when the delict is to be considered committed.

In such cases, regardless of the circumstances that modify the criminal intention, the law requires that in order to consider this type of delict committed, it is necessary for someone - one or more people

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32. Can. 1330 - A delict which consists in a declaration or in another manifestation of will, doctrine, or knowledge must not be considered completed if no one perceives the declaration or manifestation.

- to accept the declaration or verbal manifestation which constitutes the delict as such (can. 1330).

Under certain conditions, however, it must be ascertained that these manifestations of will precisely intend to achieve the criminal objective typified as a delict and not, instead, completely different purposes. This is the case of manifestations of will made, for example, on the occasion of tax returns which, primarily, tend to obtain financial concessions from the State and, in many cases, are devoid of a criminal intention in the ecclesial sphere [cf. Pontifical Council for Legislative Texts, Circular letter of 13 March 2006, in *Communicationes* 38 (2006), pp. 170-172].

IV. VARIOUS TYPES OF CANONICAL PENALTIES

33. *Various types of canonical penalties* (Title IV)

Having considered the elements capable of affecting the penal liability (imputability) of those who commit a delict, the discipline of the Code then goes on to present the types of punishments existing in Church law. Following the canonical tradition, the law classifies these punishments into three different categories: canonical censures, expiatory penalties and, finally, considered a single group, the so-called penal remedies and penance; the latter, as already said, are ways of punishing that do not properly constitute "penal" sanctions, and instead have the purpose of preventing the commission of delicts or modify the foreseen penalty.

34. *What is a canonical "censure"* (Chapter I)

The first type of penal sanctions considered are censures: they are the prototype of "medicinal penalties" which has as its objective the

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33. Title IV of this first part of Book VI is entitled "Penalties and other punishments" (*De poenis aliisque punitionibus*) and comprises cans. 1331-1340. This Title IV is subdivided, in turn, into three Chapters, each dedicated to the three types of punitive forms provided for in the penal discipline already set out in can. 1312 (cf. n. 5): censures, expiatory punishments and penal remedies and penances.

34. Chapter I of Title IV on "Penalties and Other Punishments" is entitled "Censures" (*De censuris*), and consists of cans. 1331-1335.

conversion of the offender. Can. 2241 §1 of the 1917 Code, contained a legal notion of "censure": "a penalty by which a delinquent and contumacious baptized person is deprived of a spiritual good [or] something connected with the spiritual, until, receding from bad behaviour, he is absolved."

In fact, this is precisely the fundamental point: the censures consist in depriving the offender of access to the spiritual goods necessary for the Christian life, and that is mainly the sacraments. Since this is a fundamental right of the faithful (can. 213), the law regulates precisely when and how such penalties can be imposed, trying to avoid excessive recourse to this kind of punishment by the Authority (cf. n. 12).

The name "medicinal penalties" immediately makes their purpose clear: that of curing, and therefore moving towards the conversion of the offender. Precisely for this reason, once the offender reaches and manifests a sufficient degree of repentance, he has the right to be absolved from censure in order to be able to return to making use of the spiritual goods necessary for salvation. Consequently, a censure can never be imposed for a specific time, established at the moment of imposition, since it will be the repentance of the subject, duly ascertained by the Authority, that will establish whether the penalty can be remitted or not, always keeping in mind what indicated in can. 1361 §4 in relation to the possible reparation of the damage.

35. *The three different types of canonical censures*

The censures defined in the Code are of three types: excommunication, interdict and suspension. The three penalties can be established, in a general way, through a law or, in a singular way, through a "canonical precept" which concerns specific persons. Furthermore, these penalties can be inflicted both *latae sententiae* and by means of a judicial sentence or a penal decree, that is, *ferendae sententiae* (cf. n. 8).

Addressing those who have the capacity to issue penal laws (cf. n. 9), can. 1318 however asks that no censures be established by law,

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35. Cf. *Ibid.*

"except with the utmost moderation and only against delicts of special gravity" (cf. n. 12). Furthermore, as a general criterion, can. 1347 §1 prescribes that a censure cannot be validly inflicted if the subject has not first been warned against withdrawing from the default (cf. n. 64).

36. *Excommunication: meaning and consequences* (can. 1331 §1)

The censure of excommunication was legally defined in can. 2257 §1 of the 1917 *Codex*, as "a censure by which one is excluded from the communion of the faithful with the effects that are enumerated in the canons that follow"; in fact, the name of this censure derives from this exclusion.

Without going into the more properly theological aspects, the penal discipline limits itself to indicating in practical terms what are the ecclesial consequences of the penalty of excommunication: these consequences are presented in can. 1331 which, in an orderly manner, indicates the set of prohibitions in which the penalty consists. By their nature, some of them concern only sacred ministers; others, on the other hand, concern all the faithful or, more particularly, those who carry out concrete offices, for example liturgical or curial, or who have received certain faculties or ministries from the Authority, such as acolyte, lector, etc.

Specifically, the excommunicated person is prohibited:

1°) from the Sacrifice of the Eucharist and the other sacraments;

2°) from the sacraments (the particular case of Marriage will be dealt with at the end; moreover, in danger of death, any priest can absolve the penitent according to can. 976);

3°) from administering the sacraments and to celebrate other ceremonies of liturgical worship;

4°) from having some active part in the celebrations listed above (lector, godparent, acolyte, etc.);

5°) from exercising offices or assignments or ministries or ecclesiastical functions;

6°) from issuing acts of government.

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36. Cf. *Ibid.*

The aforementioned prohibitions constitute an inseparable block, i.e., they are given simultaneously to those affected by the penalty of excommunication, whether it is imposed *latae sententiae* or by sentence or decree of the Authority.

However, provided that the censure of excommunication occurs in the "external forum", either because it was inflicted by sentence or decree, or because the *latae sententiae* excommunication was declared (cf. n. 37), new precise requirements are added to these general prohibitions and, in addition to the previous six prohibitions, the excommunicated person is subjected to a more rigorous regime which provides for:

1°) the duty to remove the excommunicated person if he claims to act against the prohibitions previously indicated in numbers (1), (2), (3), and (4). In this circumstance, the liturgical action in progress must even be interrupted, unless serious causes oppose this;

2°) the invalidity of law of any acts of government power that the person tries to put against what is prescribed in n. (6);

3°) the prohibition to use any previously granted privilege;

4°) the loss of the right to acquire any kind of salary bestowed on a purely ecclesiastical basis: here one is dealing with those established and granted by the ecclesiastical Authority, and not, for example, certain salaries bestowed by the State on which the Church naturally cannot intervene;

5°) the inability to obtain offices, assignments, ministries, functions, rights, privileges, and honorary titles in the Church.

Finally, it should be noted that the prohibition of receiving the sacraments imposed by excommunication has two exceptions provided for by law. First, in danger of death, every priest can validly absolve from any censure and sin (can. 976). The second exception concerns marriage, as it represents a natural right of the person which cannot be impeded. In this circumstance, although the reception of the sacraments is prohibited, can. 1071 §1, 5° allows the qualified witness to participate in the marriage of the excommunicated person with the permission of the Ordinary; indeed, in case of need, this license is not even necessary *ad validitatem*.

37. *The "declaration" of latae sententiae censures: meaning and consequences* (can. 1331 §2)

The *latae sententiae* censures and, in particular, the censure of excommunication *latae sententiae*, are penalties which, in principle, originate and can remain in the internal forum, since the interested party is the only one who knows that he has actually incurred the penalty, since it is the subject's own conscience called upon to ascertain it.

Sometimes, however, these *latae sententiae* penalties can pass from the internal forum to the external forum, becoming public and, consequently, subject to greater rigor on the part of the law. This transition can take place in two different forms. The first, when the judge or the ecclesiastical Authority, after having followed the penal sanctioning procedure established by law, "declares" the aforesaid penalty, i.e., states that, following what emerged from the investigation, the offender had already incurred the penalty *latae sententiae*, and therefore the judge limits himself to officially declaring it.

The second method of transition from the internal forum to the external forum can take place (under certain circumstances) without the need to celebrate any type of process, on the basis of certain information in the possession of the Authority. In fact, having the nec-

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37. Can. 1331 - §1. An excommunicated person is prohibited: 1° from celebrating the Sacrifice of the Eucharist and the other sacraments; 2° from receiving the sacraments; 3° from administering sacramentals and from celebrating the other ceremonies of liturgical worship; 4° from taking an active part in the celebrations listed above; 5° from exercising any ecclesiastical offices, duties, ministries or functions; 6° from performing acts of governance.

§2. If a *ferendae sententiae* excommunication has been imposed or a *latae sententiae* excommunication declared, the offender: 1° proposing to act in defiance of the provision of §1 nn. 1-4 is to be removed, or else the liturgical action is to be suspended, unless there is a grave reason to the contrary; 2° invalidly exercises any acts of governance which, in accordance with §1 n. 6, are unlawful; 3° is prohibited from benefiting from privileges already granted; 4° does not acquire any remuneration held in virtue of a merely ecclesiastical title; 5° is legally incapable of acquiring offices, duties, ministries, functions, rights, privileges or honorific titles.

essary information with certainty - because the subject had been previously admonished (cf. n. 64), or because he had been subject to a penal precept - the Authority can make the *latae sententiae* penalty public by "declaring" formally the censure. This normally happens if the Pastor feels the need to protect the community of the faithful from any bad influence or scandal caused by the offender. With this declaration the censure, which initially arose in the internal forum, passes to the external forum, and consequently the greater penal rigor established by the law for these cases will be followed (cf. n. 36).

38. *Meaning and content of an interdict* (can. 1332)

The second medicinal penalty present in the canonical tradition is the censure of interdict. Can. 2268 §1 *CIC* 1917 conceived it as "a censure by which the faithful, remaining in the communion of the Church, are prohibited those sacred things that are enumerated in the canons.". Indeed, many punitive effects are similar to excommunication, without however including exclusion from ecclesial communion. The new penal discipline ensures that the differences between the interdict and the other censures are more evident and makes the interdict penalty more adaptable to concrete situations, as will be seen.

In general terms, can. 1332 §1 imposes the following prohibitions on those punished with an interdict:

1°) the prohibition of celebrating the Sacrifice of the Eucharist and the other sacraments;

2°) the ban on receiving the sacraments;

3°) the prohibition to administer the sacraments and to celebrate other ceremonies of liturgical worship;

4°) the ban on having an active part in liturgical celebrations.

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38. Can. 1332 - §1. One who is under interdict is obliged by the prohibitions mentioned in can. 1331 §1 nn. 1-4.

§2. A law or precept may however define the interdict in such a way that the offender is prohibited only from certain particular actions mentioned in can. 1331 §1 nn. 1-4, or from certain other particular rights.

§3. The provision of can. 1331 §2 n. 1 is to be observed also in the case of interdict.

However, unlike excommunication, the interdict allows for the differentiated application of these prohibitions and can. 1332 admits that in the law that establishes the delicts, or in the penal precept that imposes the penalty of interdict on certain behaviours, it is better indicated in which prohibitions each interdict consists: it is in fact possible, as has been said, depending on the circumstances of the case, impose only some of the above prohibitions or possibly add the prohibition of exercising other ecclesial rights (can. 1332 §2).

Like other penalties, the censure of interdict can be imposed both by law – universal or particular – or by a penal precept given by the Authority to one or more subjects. In both cases, the penalty may be *latae sententiae* or *ferendae sententiae*.

Even in the case of the interdict, what has been said regarding the attempt not to respect the penalty that results in the external forum, because it is inflicted by sentence or decree, or declared by the Authority, applies: in fact, even in the hypothesis of the interdict there is the duty to remove the subject or to suspend the liturgical action should he try to take an active part in the ceremonies (can. 1332 §3).

As far as the celebration of marriage is concerned, what has been said for cases of excommunication is valid (cf. n. 37).

39. *What is a suspension*? (can. 1333)

Suspension is a canonical censure consisting in the prohibition of the exercise of offices or ministries according to the modalities indicated in the law or by the penal precept. Previously it was a type of

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39. Can. 1333 - §1. Suspension prohibits: 1° all or some of the acts of the power of order; 2° all or some of the acts of the power of governance; 3° the exercise of all or some of the rights or functions attaching to an office.

§2. In a law or a precept it may be prescribed that, after a judgement or decree which impose or declare the penalty, a suspended person cannot validly perform acts of governance.

§3. The prohibition never affects: 1° any offices or power of governance which are not within the control of the Superior who establishes the penalty; 2° a right of residence which the offender may have by virtue of office; 3° the right to administer goods which may belong to an office held by the person suspended, if the penalty is *latae sententiae*.

sanction to be applied only to clerics, as only to them were entrusted ecclesiastical offices or ministries. However, the new penal discipline accords with the current legislation, which does not reserve these offices in toto to clerics: a good number of ecclesiastical offices of all kinds as well as liturgical ministries can now be entrusted to non-clerical consecrated persons and lay faithful; consequently, even the latter may eventually be punished with the suspension of these functions.

As in the case of the interdict, the penalty of suspension can also have different content and, consequently, must be determined by the law or by the penal precept, within the following prohibitions established by law:

1°) prohibition to carry out all or some acts of the power of order;

2°) prohibition to carry out all or some acts of the power of governance;

3°) prohibition to exercise all or only some rights or functions inherent to the office held.

Furthermore, in the sentence or in the penal decree, to inflict or to declare the suspension (cf. n. 37), the Authority can add - if provided for in the law or by the precept (can. 1333 §2) - the sanction of invalidity of any acts of government carried out from the moment in which the suspension penalty is imposed or declared if it were a *latae sententiae* suspension.

For the protection of subjects, the law prescribes that in no case can the prohibitions involving suspension concern (can. 1333 §3): a) the exercise of offices or powers of government which are not under the power of the Superior who has constituted the penalty; b) the right to live in a place if held by reason of the office; c) the right to administer the goods that belong to the office of the person who is suspended, in the event the penalty is *latae sententiae* (cf. n. 37).

Finally, if the suspension prohibits the perception of material fruits, salaries, pensions or the like, the obligation of the suspended

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§4. A suspension prohibiting the receipt of benefits, stipends, pensions or other such things, carries with it the obligation of restitution of whatever has been unlawfully received, even though this was in good faith.

person to return what was illegitimately received still remains (can. 1333 §4).

40. *Who is responsible for determining the content of a suspension?* (can. 1334)

As has been said, the concrete content of the penalty, and that is, what the suspension consists of, must be determined for each type of delict, either in the law or in the penal precept that establishes the penalty, always within the limits established by can. 1333 (cf. n. 39). In the event that this determination is not present in the law or in the precept, it is the duty of the judge or of the ecclesiastical Authority to establish the content of the suspension in the sentence or in the penal decree.

Can. 1334 §2 allows, however, that by means of a law, a *latae sententiae* penalty of suspension can be established for certain delicts without any limitation, so that the sanction includes all the prohibitions and all the interdicts listed in can. 1333 §1 (cf. n. 39). This method of imposition, being particularly serious, cannot be achieved through a penal precept but only by law.

In such a case, it is mandatory to specify in the penal precept which of the effects of 1333 §1 includes the punishment that is warned of; otherwise, the penal precept itself would be null and void since the strict interpretation imposed by Canon 18 would apply in this case.

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40. Can. 1334 - §1. The extent of a suspension, within the limits laid down in the preceding canon, is defined either by the law or precept, or by the judgement or decree whereby the penalty is imposed.

§2. A law, but not a precept, can establish a *latae sententiae* suspension without an added determination or limitation; such a penalty has all the effects enumerated in can. 1333 §1.

41. *Possibility of adding new penalties if the censure were not enough* (can. 1335 §1)

As has been said, the main objective of medicinal penalties is to achieve the offender's amends and his conversion. However, in the event that these were not sufficient to achieve the other two purposes pursued by the penal discipline, namely the reintegration of justice and the reparation of scandal (cf. n. 4), the Authority, which by sentence or penal decree inflicts or declares a censure of any kind as a penalty for a delict, can also impose in addition the expiatory penalties he deems necessary (cf. n. 43).

42. *Pastoral circumstances that could suspend the effects of censures imposed on clerics* (can. 1335 §2)

Canon law has always accepted a general principle of suspension of the effects of the censures prescribed to the cleric, in particular circumstances linked to specific pastoral needs.

Concretely, if the censure – excommunication, interdict, or suspension – which has been imposed by a penal sentence or decree (or even formally declared) prohibits the celebration of the sacraments or sacramentals or to place acts of the power of governance (e.g., a matrimonial dispensation), the prohibition is suspended whenever it is necessary to provide pastoral care for the faithful who are in danger of death.

Instead, if the censure is found in the "internal forum", i.e., in the case of an undeclared *latae sententiae* penalty, these prohibitions are suspended not only in cases of danger of death, but also whenever,

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41. Can. 1335 - §1. If the competent authority imposes or declares a censure in a judicial process or by an extra-judicial decree, it can also impose the expiatory penalties it considers necessary to restore justice or repair scandal.

§2. If a censure prohibits the celebration of the sacraments or sacramentals or the performing of acts of the power of governance, the prohibition is suspended whenever this is necessary to provide for the faithful who are in danger of death. If a *latae sententiae* censure has not been declared, the prohibition is also suspended whenever one of the faithful requests a sacrament or sacramental or an act of the power of governance; for any just reason it is lawful to make such a request.

42. Cf. *Ibid.*

with just cause, a faithful spontaneously ask the cleric under censure to celebrate a sacrament, a sacramental or perform an act of the power of governance (can. 1335 §2). This rule finds its foundation in the need to protect the subject's good reputation, and in the principle that no one is required to defame himself (Cf. n. 17).

43. *Expiatory penalties: concept and application* (Chapter II)

In addition to the censures just examined, the second type of penalties present in the canonical tradition consists of the so-called expiatory penalties. In the discipline of the *Codex* of 1917, can. 2286 offered a legal notion of this kind of penalties (then called vindictive penalties) indicating that they have the specific purpose of atonement for the delict. Consequently, their remission is not only linked to repentance or the cessation of the pertinacity of the offender, but mainly to the personal sacrifice lived with a purpose of reparation and correction.

It is necessary to examine, now, a question that was previously mentioned (cf. n. 41). Even if all penal sanctions in the Church pursue the reform and correction of the offender, in order to achieve the other purposes that the canonical penalty also has - that is, to restore the order of justice and repair the scandal caused by the delict (cf. n. 4) – often further punishments are necessary through the application of expiatory sanctions, which involve the deprivation for a fixed or indefinite period of time, or even in a perpetual manner, of certain rights which the subject enjoyed, without however preventing the access to the means of salvation of the Church. In fact, these expiatory penalties can never contain any type of prohibition of access to the sacraments.

The penal discipline promulgated in 2021 contains a more developed and detailed presentation of the types of expiatory penalties that can be imposed, and this with a dual purpose. On the one hand, the

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43. Chapter II of Title IV of Part One of Book VI of the Code of Canon Law is entitled "Expiatory penalties" (*De poenis expiatoriis*) and comprises *CIC* 1336-1338.

intention is thus to respect the principle of penal legality and the certainty of the content of the penalties, as a guarantee for the offender and without the determination of the type of penalty being left to the discretion of whoever has to judge. While previously, after having described the type of delict, the canons generally required the Authority to punish them with a just penalty (*iusta poena puniatur*), now the precise type of penalty that he must impose is indicated to the Authority. On the other hand, the presentation of a wide range of sanctions has been presented by the law in a crescent order of severity, with the aim of facilitating the role of those who have to judge by choosing from the penalties enumerated in can. 1336.

Can. 1336 lists the expiatory penalties, of universal application. In addition to these, the author of the law can possibly establish others as well (can. 1336 §1). The Authority that has to punish is required to identify the penalty to be imposed among those established by the legislator, without inventing penalties other than those indicated in law.

44. *What are expiatory penalties? What is their duration?* (can. 1336)

Expiatory penalties contemplated in the Code have been grouped, in order of the severity of the punishment, into the following four groups:

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44. Can. 1336 - §1. Expiatory penalties can affect the offender either for ever or for a determined or an indeterminate period. Apart from others which the law may perhaps establish, they are those enumerated in §§2-5.

§2. An order: 1° to reside in a certain place or territory; 2° to pay a fine or a sum of money for the Church's purposes, in accordance with the guidelines established by the Episcopal Conference.

§3. A prohibition: 1° against residing in a certain place or territory; 2° against exercising, everywhere or inside or outside a specified place or territory, all or some offices, duties, ministries or functions, or only certain tasks attaching to offices or duties; 3° against performing all or some acts of the power of order; 4° against performing all or some acts of the power of governance; 5° against exercising any right or privilege or using insignia or titles; 6° against enjoying an active or passive voice in canonical elections or taking part with a right to vote in ecclesial councils or colleges; 7° against wearing ecclesiastical or religious habit.

1°) two forms of penal commands or injunctions (cf. n. 45): 1° to reside in a certain place or territory; 2° to pay an amends or a sum of money for the Church's purposes, in accordance with the guidelines established by the Episcopal Conference;

2°) seven possible prohibitions on carrying out acts of a specific kind (cf. n. 46): 1° against residing in a certain place or territory; 2° against exercising, everywhere or inside or outside a specified place or territory, all or some offices, duties, ministries or functions, or only certain tasks attaching to offices or duties; 3° against performing all or some acts of the power of order; 4° against performing all or some acts of the power of governance; 5° against exercising any right or privilege or using insignia or titles; 6° against enjoying an active or passive voice in canonical elections or taking part with a right to vote in ecclesial councils or colleges; 7° against wearing ecclesiastical or religious habit.

3°) five modalities of deprivation of certain rights which the subject enjoyed (cf. n. 47): 1° of all or some offices, duties, ministries or functions, or only of certain functions attaching to offices or duties; 2° of the faculty of hearing confessions or of preaching; 3° of a delegated power of governance; 4° of some right or privilege or insignia or title; 5° of all ecclesiastical remuneration or part of it, in accordance with the guidelines established by the Episcopal Conference, without prejudice to the provision of can. 1350 § 1;

4°) lastly, as the maximum punishment for a certain type of person and for particularly serious delicts, the penalty of dismissal from the clerical state.

The progressive gradualness of the presentation of the four types of penal sanctions intends to facilitate the task of the Authority which

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§4. A deprivation: 1° of all or some offices, duties, ministries or functions, or only of certain functions attaching to offices or duties; 2° of the faculty of hearing confessions or of preaching; 3° of a delegated power of governance; 4° of some right or privilege or insignia or title; 5° of all ecclesiastical remuneration or part of it, in accordance with the guidelines established by the Episcopal Conference, without prejudice to the provision of can. 1350 §1.

§5. Dismissal from the clerical state.

must assign the sentences proportionally (cf. n. 66). In principle, it can be seen that the injunctions indicated first are less onerous than the prohibitions or deprivations listed below, and, within each category, it is understood that the penalties indicated first are less severe than the following ones.

Whoever has to judge, whether judicially and administratively, will have to choose the most appropriate type of penalty - always within the ambit of their jurisdiction - in relation to the delict committed and then determine its duration over time, based first on the indications given by the law, which often already signals what the penalty to be applied should be. In this evaluation, he must take into account the circumstances that contribute to the delict, especially the exempting (cf. n. 21), mitigating (cf. n. 23) or aggravating (cf. n. 27) circumstances established by canon law.

Obviously, not all the penalties provided for by the Code can be applied to any member of the faithful, as it is necessary to take into account the condition of each one and the juridical position he occupies in the Church. By their nature, some penalties can be applied only to clerics, or to those who hold an office or a ministry, others instead to those who are bound in the Church with particular commitments different from those common to all the faithful for Baptism.

Expiatory penalties can be applied to a delinquent "either forever or for a determined or an indeterminate period" (can. 1336 §1). It is also possible to impose them for an indefinite period. Ordinarily, perpetual penalties can be inflicted or declared only by judicial sentence and in the foreseen cases (can. 1342 §2).

To conclude the topic, it should be noted that in the drafting of these texts and in the identification of each of the expiatory penalties provided for by the Code, an attempt was made to make strict use of the concepts employed, such as power, office, ministry, rights, privileges, faculties, pardons, titles or insignia.

45. *Penal injunctions or commands* (can. 1336 §2)

The first class of expiatory sanctions concerns commands or prescriptions whereby the subject is required to observe a certain conduct within the time or in the manner indicated in the Authority. The impositions that can be determined in this sense are substantially two:

1°) obligation to reside in a certain place or territory, a penalty which can only be imposed on certain categories of faithful and with the assent of the Bishop of the place, as can. 1337 §1 (cf. n. 50);

2°) obligation to pay a fine or sum of money for the purposes of the Church, according to the norms established in this regard by the respective Episcopal Conference.

46. *Penal prohibitions: nature and modality* (can. 1336 §3)

Penal prohibitions, which can be imposed as a penalty for the delict, consist in the obligation to refrain from carrying out certain acts or behaviours. As will be said, they are the only expiatory penalties that can be imposed as *latae sententiae* penalties (cf. n. 51). The prohibitions established by the Code are as follows:

1° prohibitions against residing in a certain place or territory (cf. n. 50);

2° prohibitions against exercising, everywhere or inside or outside a specified place or territory, all or some offices, duties, ministries or functions, or only certain tasks attaching to offices or duties;

3° prohibitions against performing all or some acts of the power of order;

4° prohibitions against performing all or some acts of the power of governance;

5° prohibitions against exercising any right or privilege or using insignia or titles (cf. nn. 42, 51)

6° prohibitions against enjoying an active or passive voice in canonical elections or taking part with a right to vote in ecclesial councils or colleges;

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45. Cf. *Ibid.*

46. Cf. *Ibid.*

7° prohibitions against wearing ecclesiastical or religious habit.

Some of these prohibitions can be imposed following different methods, which will need to be determined in the sentence or decree imposing the sanction. For example, the prohibition to exercise rights could prohibit, in the case of lay faithful, the exercise of certain specific rights set forth in the Code, such as that of founding associations (can. 215), of participating in ecclesiastical offices (can. 228), to access the ministries (can. 230), to be able to preach in the conditions of can. 766, etc. In the case of clerics, the possibilities of introducing prohibitions on the exercise of their functions, should it become necessary, can be much wider.

47. *Penal deprivation: nature and modality* (can. 1336 §4)

The *penalty* of deprivation consists in the loss of some right or position which the subject legitimately enjoyed, during the time and in the manner established by the sentence or penal decree. The deprivations foreseen in the Code are the following:

1°) deprivation of all or some offices, positions, ministries, or functions or only of some functions inherent in the offices or positions. However, as will be said, it is not possible to deprive someone of the power of order received (can. 1338 §2);

2°) deprivation of the faculty to receive confessions or the power to preach;

3°) deprivation of delegated power of governance;

4°) deprivation of certain rights or privileges or insignia or titles. It is not possible, however, to deprive anyone of legitimately obtained academic degrees (can. 1338 §2);

5°) deprivation of all or part of ecclesiastical remuneration, according to the regulations established by the Bishops' Conference, except for the duty to ensure what corresponds to the honest livelihood of the subject (can. 1350 §1).

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47. Cf. *Ibid.*

Even in the case of deprivation of rights, the sentence or decree inflicting the penalty must concretely indicate, according to the circumstances, which rights the subject is deprived of and for how long.

48. *The penalty of dismissal from the clerical state* (can. 1336 §5)

The most serious of the canonical penalties provided for by the law is the loss of the clerical status of one who has been incorporated under this condition for the Sacrament of Holy Orders. As a canonical penalty it is applicable only in the cases foreseen by the universal law, since there is the prohibition that this punishment can be established by means of particular laws (can. 1317).

Since it is a perpetual penalty, it must be imposed by sentence at the end of a judicial process (cf. n. 59): in these cases, it is not possible to follow an extrajudicial penal procedure. However, in cases of *delicta reservata*, the motu proprio *Sacramentorum sanctitatis tutela* granted the Dicastery for the Doctrine of the Faith the faculty to impose this penalty also by administrative decree; for other specific cases, similar faculties have been granted to the Dicastery for the Clergy and to that for Evangelization.

49. *Difference between expiatory sentences and disciplinary sanctions*

The expiatory penalties mentioned in the Code (cans. 1336 ff.), specifically concern penal sanctions that can be inflicted as an amends for canonical delicts, after having carried out the appropriate judicial process or the extrajudicial process established for this.

However, the obligatory prescription of some of the measures listed by can. 1336 can be adopted by the Authority for other purposes: sometimes, in fact, even without the presence of a specific delict, the ecclesiastical Authority deems it necessary to impose some of these measures of a disciplinary, non-penal nature, in order to correct certain conduct (Cf. 191). As is natural, any disciplinary provision by the Ordinary must be carried out in conformity with the indications

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48. Cf. *Ibid.*

49. Cf. *Ibid.*

of the law, and that is, by means of an administrative decree carried out according to cans. 48 ff. *CIC*; moreover, as an administrative act, the provision is susceptible of normal administrative recourse to the higher Authority according to cans. 1732 ff.

50. *Can some penalties be applied only to certain individuals?* (can. 1337)

As has been said, some of the expiatory penalties provided for by the Code can only be applied to a certain type of person. For example, the prohibition to reside in a specific place or territory can only be applied to clerics or religious. In the same way, the summons to reside in a specific place can be imposed, as the law indicates, only on secular clerics and, within the limits of the respective constitutions, on religious (can. 1337 §1) as well as on clerics of Institutes subject to the jurisdiction of the Bishop (cf. n. 14).

Furthermore, to impose confinement in a place as a canonical sanction, the prior consent of the respective Ordinary of that place is required, unless it is a case of a House intended for the penance and correction of clerics, even those extra-diocesan (can. 1337 §2).

51. *A brief overview of the general criteria regarding the imposition of expiatory penalties* (can. 1338)

At the end of the chapter concerning expiatory penalties and the demands that each of them entails, the Code provides in can. 1338

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50 Can. 1337 - §1. A prohibition against residing in a certain place or territory can affect both clerics and religious; however, the order to reside in a certain place or territory can affect secular clerics and, within the limits of the constitutions, religious.

§2. To impose an order to reside in a certain place or territory requires the consent of the ordinary of that place unless it is a question of a house designated for clerics doing penance or being rehabilitated even from outside the diocese.

51. Can. 1338 - §1. The expiatory penalties enumerated in can. 1336 never affect powers, offices, functions, rights, privileges, faculties, favours, titles or insignia, which are not within the control of the Superior who establishes the penalty.

§2. There can be no deprivation of the power of order, but only a prohibition against the exercise of it or of some of its acts; neither can there be a deprivation of academic degrees.

some general criteria that must be kept in mind when this kind of penal sanctions are used.

First, the norm warns ecclesiastical Authority that it cannot impose expiatory penalties, in general, with regard to offices or ministries that are not under its jurisdiction, but under that of another ecclesiastical Authority.

Secondly, it is clarified that it is not possible to deprive someone of the power of order, but only, possibly, of the right to exercise it in general or with reference to specific acts of power of order.

Furthermore, with regard to the prohibitions on exercising the ministry, it should be remembered that, as in the case of censures (cf. n. 42), the prohibition is "suspended" whenever it is necessary to provide for those in danger of death and, if it is a *latae sententiae* prohibition, whenever the cleric is asked for the administration of a sacrament or an act of government power with just cause.

In fact, as §4 of can. 1338, only prohibitions can be *latae sententiae* penalties: in fact, these are the only expiatory penalties, the non-observance of which can be ascertained in a certain way by the subject.

Finally, as a guarantee of juridical certainty, the law prescribes that the prohibitions established as expiatory penalties never lead to the nullity of any acts imposed in contravention of the penalty.

52. *Accessory sanctions: meaning and modality* (Chapter III)

In addition to the strictly "penal" sanctions that have been mentioned so far, censures and expiatory penalties, canonical tradition has configured throughout history another type of punishment, accessory and of lesser entity, which do not have a strictly penal character, as is

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§3. The norm laid down for censures in can. 1335 §2 is to be observed in regard to the prohibitions mentioned in can. 1336 §3.

§4. Only those expiatory penalties enumerated as prohibitions in can. 1336 §3, or others that may perhaps be established by a law or precept, may be *latae sententiae* penalties.

§5. The prohibitions mentioned in can. 1336 §3 are never under pain of nullity.

52. Chapter III of Title IV of Part One of Book VI is entitled "Penal Remedies and Penances" (*De remediis poenalibus et poenitentiis*), and consists of cans. 1339 and 1340.

well indicated in an. 1312 §3 (cf. n. 5). These other sanctions are the so-called "penal remedies" and "penances".

Precisely for the purpose of underlining the pastoral nature of penal discipline and the need to use it gradually, pursuing the objective of correcting bad conduct in time, so that it does not evolve in more serious situations, the new Book VI has dedicated particular attention to these penal remedies and penance. In fact, these are tools that the Authority believes are quicker to implement and more at hand: as a matter of fact, once these remedies are deemed necessary, there is no need to set up an inquisitorial procedure, although it is always necessary to comply with the required formalities from law.

The new discipline has resumed the general framework that was present in the 1917 *Codex*, explicitly considering, in addition to the "admonition" and "reprimand", already mentioned in the 1983 text, both the "penal precept" and "vigilance" which, on the other hand, were not present in the previous legislation as penal remedies. These penal remedies are traditionally considered to be sanctions imposed to prevent the execution of a delict or to avoid re-incidence of the perpetrator.

Penal remedies and penances are generally optional, i.e., to be imposed at the prudent judgment of the Authority; possibly, they can also be imposed in addition to the sentence or penal decree which imposes certain penalties on the subject (cf. n. 59). Accessory sanctions of this type are concretely suggested to the judge in cases in which the delict has not been completed, despite the person having carried out the actions necessary to carry it out, unless the need to repair the scandal or other serious damage suggest otherwise (cf. n. 30).

53. *First sanctions to dissuade from committing a delict* (can. 1339 §§ 1-2)

The personal admonition of the subject is mainly provided for by law against those who are on the imminent occasion of committing a delict or those who, on the basis of the investigations conducted, are suspected of having committed it. It is, therefore, a "formal reprimand", made with kindness and respect, but in such a way that it is perceived by the subject as a punitive measure and not simply as a friendly and fractious gesture.

Admonition generally has a preventive character, in that the subject is invited to change his conduct and warned of the consequences that may occur in the opposite case. In this sense, admonition is envisaged as a first step towards punishing milder offences, if this would be sufficient to redress justice and scandal, and towards the offender's repentance (cf. n. 58). Furthermore, admonition is required by law as a prior step before censure is imposed on anyone (cans. 1347 §1, 1365, 1371 §1) and before certain expiatory punishments are imposed, it always being necessary to allow a prudential time to verify

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53. Can. 1339 - §1. When someone is in a proximate occasion of committing a delict or when, after an investigation, there is a serious suspicion that a delict has been committed, the Ordinary either personally or through another can give that person warning.

§2. In the case of behaviour which gives rise to scandal or serious disturbance of public order, the Ordinary can also correct the person, in a way appropriate to the particular conditions of the person and of what has been done.

§3. The fact that there has been a warning or a correction must always be proven, at least from some document to be kept in the secret archive of the curia.

§4. If on one or more occasions warnings or corrections have been made to someone to no effect, or if it is not possible to expect them to have any effect, the Ordinary is to issue a penal precept in which he sets out exactly what is to be done or avoided.

§5. If the gravity of the case so requires, and especially in a case where someone is in danger of relapsing into a delict, the Ordinary is also to subject the offender, over and above the penalties imposed according to the provision of the law or declared by sentence or decree, to a measure of vigilance determined by means of a singular decree.

whether the change of conduct has taken place or not (cans. 1394 §1, 1395 §1, 1396).

The reprimand made by the Ordinary is provided for by law against those who, by their behaviour give rise to scandal or serious disturbance of public order (can. 1339 §2). It is therefore an instrument suited to correcting lines of conduct or general attitudes of the subject contrary to the discipline of the Church (e.g., liturgical, or sacramental discipline) or to due pastoral conduct, rather than to punishing individual acts or preventing offences. The Authority must, therefore, assess the appropriate way to carry out reprimand, also taking into account the extent of the delict and the person's condition.

Both admonition and reprimand can be carried out directly by the Ordinary or through his delegate, either orally or in writing, although, in any case, the law requires that a written record of the admonition given be left, even if it is carried out orally, to be kept in the secret archives of the Curia (can. 1339 §3; cf. Appendix 4).

If the Authority considers it appropriate, depending also on the dispositions of the subject, together with the admonition or reprimand, the Ordinary may impose appropriate penances on the subject (cf. n. 56).

In the case of a religious belonging to a clerical institute of pontifical right, which already has a Superior as its proper Ordinary, the diocesan Ordinary should ask the aforementioned Superior to intervene so that he may eventually carry out the admonition. However, the diocesan Ordinary may do so directly in the cases envisaged by Canon 1320 (cf. n. 14).

54. *What is the function of a penal precept?* (can. 1339 §4)

One of the main tools that the new penal discipline has identified with the aim of facilitating the pastoral governance of communities is the "penal precept". This is one of the traditional penal remedies in the Church, also foreseen in the legislation of 1983: it was treated in general terms in can. 49 of Book I of the Code, without a specific

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54. Cf. *Ibid.*

consideration of its sanctioning function; in fact, it was not mentioned among the penal remedies referred to by the abrogated can. 1339.

Now, however, this means has been redefined with the aim of delivering in the hands of the Ordinary an agile tool to be able to correct different types of transgressions or serious acts against the discipline. Taking up the tradition of can. 2310 of the *Codex* 1917, can. 1339 §4 considers the "penal precept" as the means that the Authority must employ when, after having given the subject one or more admonitions and corrections in vain, it deems it cannot reasonably expect any repentance in the person's conduct. In such circumstances, the law imperatively orders the Ordinary to impose a penal precept: "*Ordinarius det praeceptum penale*", indicating the behaviour that must be observed and the sanction to which the subject would fall in case of disobedience.

The configuration of the penal precept has not been changed with respect to the previous legislation. As a precept intimated to a person, it consists of "a decree which directly and legitimately enjoins a specific person or persons to do or omit something, especially in order to urge the observance of law" (can. 49), imposing certain penalties. The punishments inflicted can be expiatory penalties or even censures, even in the form *latae sententiae*, although not of a perpetual nature (can. 1319).

The "penal precept" is an agile tool because it is not really a question of a "penal" punishment, but of configuring a certain conduct relating to a specific subject as criminal Can. 1319 prescribes in these cases the observance of cans. 48-58, necessary to produce singular decrees: it is prescribed to do so in writing, to carry out an adequate comparison beforehand to ascertain the circumstances, and finally to indicate the motivation, at least in a synthetic way. The penal precept is technically a singular norm, given for one or more subjects. Consequently, in the event of non-compliance with the provisions, it will then be necessary to start the procedure for ascertaining non-compliance with the precept (cf. nn. 175 ff.; 184 ff.; 200 ff.) and then issue a singular decree (cf. n. 221) by imposing the penalty imposed in the precept, except in the case of a *latae sententiae* penalty.

With the penal precept, in fact, a delict has been configured for a subject or for a group of people. Consequently, it will subsequently be necessary to start the normal assessment procedures in order to ascertain, through the normal means of evidence of each penal procedure, whether the violation of the penal precept that had been imposed on the subjects has actually been committed.

With the necessary balance proper to the Pastor, the Ordinary can make use of the penal precept (cf. Appendix 5), provided he considers it necessary to avoid a delict, when there is the suspicion that one has been committed (can. 1339 § 1), or when someone's behaviour could be an occasion for scandal or lead to serious disturbance of the order (can. 1339 §2).

55. *What is the remedy of vigilance?* (can. 1339 §5)

Vigilance was a penal remedy provided for by the 1917 *Codex* which had not been considered as an autonomous institution by the 1983 Code, even if it was still used in practice.

As a preventive measure against delicts, vigilance is considered in the Code as a measure to avoid the re-incidence in the commission of delicts and, therefore, to be adopted particularly with regard to those "in danger of relapsing into a delict" (can. 1339 §5). Since this is its purpose, supervision can be a remedy which, by the Authority's judgment, can also be annexed to other penalties inflicted on the subject in accordance with the law or declared by sentence or decree: the purpose is to verify that the behaviour of the person supervised is adapted to the observance of the law and of what has been prescribed to it.

As specified in can. 1339 §5, this is a penal remedy is to be used when the gravity of the case requires it. It is also a measure that the Ordinary must impose in writing, by means of a singular decree mentioned in cans. 48 ff., indicating with sufficient clarity the subject required to exercise the supervision of the person subjected and the methods of verification and other details appropriate to the circum-

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55. Cf. *Ibid.*

stances of the case for the remedy to be effective. Obviously, the personal circumstances of the subjects involved must always be taken into account: furthermore, whoever is called to supervise will have to accept the commitment, and it will always be necessary to observe the legislation of the State.

56. *In what sense are penances considered accessory sanctions?* (can. 1340)

Together with the penal remedies, the other ancillary sanctions known by the discipline of the Church are the "penances". They consist in the obligation to carry out some work of religion, piety, or charity, upon intimation of the Authority. It is an act of a different nature from sacramental penance, which is imposed in the moral sphere. Penances are obligations derived from an act of jurisdiction, from a mandate from the Authority with the intention of sanctioning by the subject (cf. can. 1312 §3). It can be imposed in the external forum, but also in the internal forum for the absolution of *latae sententiae* censures. This type of penances also requires that it be accepted by the subject.

Traditionally, penances were considered as sanctions imposed on the subject in order to avoid the imposition of the penalty that he should have received, or in the event that the offender was worthy of the absolution or remission of a penal sanction already imposed (can. 2312 §1 *CIC* 1917). Therefore, the Authority will have to evaluate the opportunity to impose penances according to all the circumstances present in the case, evaluating, in addition to the attitude of the subject, the needs of justice and the reparation of the scandal.

Can. 2313 of the 1917 Code contained some examples of possible penances: reciting certain prayers; make a pilgrimage or other acts of

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56. Can. 1340 - §1. A penance, which can be imposed in the external forum, is the performance of some work of religion, piety, or charity.

§2. A public penance is never to be imposed for an occult transgression.

§3. According to his own prudent judgment, an ordinary can add penances to the penal remedy of warning or rebuke.

piety; observe a few days of special fasting; give alms for purposes of piety; make a few days of spiritual exercises in some religious house.

V. Provision and criteria for the correct application of penalties

57. *Provision and criteria for the correct application of penalties* (Title V)

All the faithful are required to observe ecclesiastical legislation, in the terms established by the law of the Church herself. However, the Pastors have the task of watching over the observance of the canonical discipline in their respective area of responsibility, and adopting the measures indicated in the law itself to protect the community and the unity of the Church. Can. 392 §1 recalls that "Since he must protect the unity of the universal Church, a Bishop is bound to promote the common discipline of the whole Church and therefore to urge the observance of all ecclesiastical laws." An analogous duty corresponds to those who are equivalent to the Bishop and to the Superiors of the Institutes of Consecrated Life and Societies of Apostolic Life.

In the previous paragraphs, the person who can issue penal laws was considered; what circumstances can modify the criminal liability of the offender and what sanctions can be imposed: at this point it is necessary to illustrate the procedure that the ecclesiastical Authority is responsible for when he becomes aware of facts that could represent delicts that threaten ecclesial society.

In such a situation, when it comes to proceeding, the Authority must know how to combine criteria and modalities of various types, necessarily harmonized through the attitude and aptitude proper to the Pastor. This is the objective of cans. 1341-1353 (cf. nn. 58-69). In the first place, it is necessary to balance two very important fundamental principles: the first is to protect the presumption of innocence

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57. Title V of this Part One, "The Application of Penalties" (*De poenarum applicatione*), is made up of cans. 1341-1353.

of the subject (see n. 16), which must however be accompanied by the duty of the Authority to take action to punish unlawful conduct (see n. 58): the new regulation decided to underline this particular aspect. Subsequently, once the investigation into the individual case has begun, the law places a series of indications, faculties and implementation criteria in the hands of the Authority so as to be able to arrive at a just and pastorally balanced conclusion.

58. *The obligation of the Ordinary to activate the procedure for the application sanctions* (can. 1341)

One of the main differences with the 1983 discipline consists in the imposition on the Ordinary of the obligation to act as soon as he receives verisimilar news of the commission of a delict. As will be seen in the third section of this Guide, having received the first information on the facts, the Ordinary must proceed in a very short time, first, to ascertain the gravity of the information acquired and, immediately afterward, if he has found it to be sufficiently founded, prudently start the so-called "preliminary investigation" in order to verify if the details necessary to establish a sanctioning procedure are found. The beginning of this phase of investigation is established by the Bishop, with a simple Decree in which the person in charge of this task is nominated (cf. Appendix 1).

From the outset, a significant change in the penal discipline of the Church in this regard is evident. Indeed, on the basis of the experience of past years, the new can. 1341 substantially modified the previous criterion, which provided for the Ordinary to initiate the penal procedure "only when he has ascertained" that the other remedies were not sufficient to repair the damage caused by the delict. Now, however, while reiterating the need to evaluate other ways of correcting, the text uses a commanding command formula – *promovere debet*

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58. Can. 1341 - The Ordinary must start a judicial or an administrative procedure for the imposition or the declaration of penalties when he perceives that neither by the methods of pastoral care, especially fraternal correction, nor by a warning or correction, can justice be sufficiently restored, the offender reformed, and the scandal repaired.

- so that the Ordinary initiates the procedures in view of sanctions, unless he reasonably believes that it is not possible to re-establish the order of justice, obtain amends for the offender and obtain reparation for the scandal caused by the delict through other possible ways dictated by pastoral solicitude, such as admonition or fraternal correction, etc.

The competent ecclesiastical Authority therefore has the obligation to act once he has received news of the facts, which is very different from the discretion left to it at this point by the previous legislation. It is a duty in the wake of what was established in other pontifical interventions, such as the motu proprio *As a Loving Mother*, of 4 June 2016, in *AAS* 108 (2016) 715-717, and the motu proprio *Vos Estis Lux Mundi*, of 7 May 2019, in *Communicationes* 51 (2019), pp. 23-33.

In many cases, on the basis of the elements already acquired at this initial stage, it will be necessary for the Authority to adopt some disciplinary measures against the person indicated, to protect the community and the interests of the Church (cf. can. 392). These measures are formally different from the precautionary measures, which can be imposed only once the penal procedure has been initiated (can. 1722). However, these disciplinary measures must correspond to the nature and type of delict alleged against the subject and must in any case be adopted in ways that do not harm the presumption of innocence that the law establishes against him (Cf nn. 191,208).

Once the preliminary investigation has been concluded, if elements have emerged that require the need to start the procedure in view of sanctions, the Authority can opt for one of the two ways permitted by law: either proceed judicially, through a canonical tribunal which will have to follow a regular trial penal law (cans. 1717-1731) and pronounce a penal sentence or proceed by administrative means. In this case it will be the Bishop or the Superior himself, with the help of Assessors, who will have to follow an administrative sanctioning procedure which will lead to a penal decree (cf. nn. 165.). In deciding to follow the judicial or administrative route, the Bishop must take into account the actual material and personal possibilities on which

he can count, as well as the circumstances which allow canonical justice to independently achieve its goals.

It is necessary to bear in mind at this initial moment that there is a reservation of law which entrusts the judgment on certain types of delicts to precise ecclesiastical Authorities, thus removing them from the Ordinary. For example, criminal offences committed by heads of state, cardinals, Bishops and other subjects listed in can. 1405 §1 are reserved to the Roman Pontiff. Furthermore, as is well known, all the more serious delicts indicated in the motu proprio *Sacramentorum sanctitatis tutela* of 30 April 2001, in *AAS* 93 (2001) 737-739 and subsequent amendments, are the responsibility of the Dicastery for the Doctrine of the Faith. Therefore, in the case of delicts "reserved" by the law to others, the Ordinary will have to transmit the information in his possession to the Holy See (the Secretariat of State, the Dicastery for Bishops or for evangelization in the case of Bishops, or the Dicastery for the Doctrine of the Faith in the case of delicts referred to in the motu proprio *Sacramentorum sanctitatis tutela*).

59. *The two ways of imposing penalties: judicial procedure and extrajudicial procedure* (can. 1342 §1)

In general terms, the law gives priority to the judicial process, before ecclesiastical tribunals, as the most suitable form for the imposition of canonical penalties. In fact, when it is necessary to impose a

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59. Can. 1342 - §1. Whenever there are just reasons against the use of a judicial procedure, a penalty can be imposed or declared by means of an extra-judicial decree, observing canon 1720, especially in what concerns the right of defence and the moral certainty in the mind of the one issuing the decree, in accordance with the provision of can. 1608. Penal remedies and penances may in any case whatever be applied by a decree.

§2. Perpetual penalties cannot be imposed or declared by means of a decree; nor can penalties which the law or precept establishing them forbids to be applied by decree.

§3. What the law or decree says of a judge in regard to the imposition or declaration of a penalty in a trial is to be applied also to a Superior who imposes or declares a penalty by an extra-judicial decree, unless it is otherwise clear, or unless there is question of provisions which concern only procedural matters.

perpetual penalty - except in the exceptional cases provided for by the law, such as for example in delicts reserved to the Dicastery for the Doctrine of the Faith - it will be necessary to follow the judicial and not the extrajudicial process (can. 1342 §3).

However, when there is a "just cause" for not following the judicial process, it is permitted for the Authority to initiate a sanctioning procedure of an administrative nature, following what can. 1720. The Code does not say what may be the just causes for using the extrajudicial process, since this evaluation belongs to the ecclesiastical Authority. The reason must be neither the greater brevity nor the greater simplicity of the extrajudicial process, since both ways require a similar observance of the established rules, equal evaluation of witnesses and proofs, etc. However, judicious reasons may suggest using the extrajudicial process, such as for example the lack of a trained personnel to establish a judicial process, the distance from the nearest court if there is none in the diocese, the particular urgency of resolving the case, whether it is an obvious delict, etc. However, compared to the administrative one, the judicial process involves, greater publicity of any action and a greater diffusion of news and debates, the consequences of which must not be overlooked. The extrajudicial process, on the other hand, although it requires the sharing with the parties of all the elements of judgment (documentation, testimony, evidence, etc.) necessary to ensure the right of defence, allows the Authority to maintain greater control over the dissemination of information concerning the judgment. Furthermore, there will always be the opportunity of going to a second instance for a possible appeal to reconcile any wrongs committed in the first, even if in an administrative form.

Despite the general indication for the judicial process, the new penal law takes into account that on numerous occasions it will be necessary to follow an extrajudicial process to impose the punishment. For this reason, without examining this procedure (cf. nn. 165 ff. of the present Guide) the new can. 1342 §1 wanted to underline the duty to observe, if the extrajudicial process is followed, two essential requirements: first, respect for the right of defence of the accused and all that it entails, mainly regarding the subject's faculty to make use of

a lawyer of one's choice from the moment the delict is contested and regarding legitimate access to procedural documents; secondly, the need for the Authority, before issuing the punitive decree, to reach the same moral certainty on the culpability of the subject that can. 1608 requires the judge "*ex actis et probatis*" (can. 1608 §2).

Furthermore, regarding the extrajudicial process, can. 1342 §2 asks the ecclesiastical Authority – the Bishop or the Superior – to maintain the attitude which is proper to a judge: "What the law or decree says of a judge in regard to the imposition or declaration of a penalty in a trial is to be applied also to a Superior who imposes or declares a penalty by an extra-judicial decree". Notwithstanding the news that due to the office he has been able to receive regarding the offender or the circumstances of the delict, the ecclesiastical Authority will have to maintain the impartiality that must be proper to the judge only on the basis of what emerged during the process.

60. *How should the Authority act in the case of optional penalties?* (can. 1343)

At the end of the extrajudicial process described in nn. 165 ff., once the whole question has been examined and those called to intervene have been heard, the law (or even a penal precept) sometimes grants those who have to make a decision the right to evaluate whether it is necessary to punish a specific criminal conduct. These are the so-called "optional" penalties.

In these cases, can. 1343 asks the Authority to take the decision it deems appropriate in conscience, on the basis of what emerged during the investigation. In order to help take the appropriate decision, the new penal law provides the Authority with the parameters on the basis of which he must take this decision, which are always the three

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60. Can. 1343 - If a law or precept grants the judge the faculty to apply or not to apply a penalty, he is, without prejudice to the provision of can. 1326 §3, to determine the matter according to his own conscience and prudence, and in accordance with what the restoration of justice, the reform of the offender and the repair of scandal require; in such cases the judge may also, if appropriate, modify the penalty or in its place impose a penance.

corresponding to the purpose of penal law: re-establishment of justice, amendment of the offender and reparation of scandal (cf. n. 4).

Furthermore, in these circumstances, whoever has to judge must also take into account two particularities: 1° in the presence of aggravating circumstances (cf. n. 27), the penalties that were optional become obligatory (can. 1326 §3) and, consequently, must necessarily punish the delict (cf. n. 28); 2° finally, if the penalty is optional and without aggravating circumstances, the judge can also opt - considering the three parameters of judgment mentioned above - to punish with a milder sanction or even to impose only a penance (cf. n. 56).

61. *Faculty to defer, lessen or suspend the penalty* (can. 1344)

On the basis of what emerges during the extrajudicial process or the judicial one, whoever has to judge can, in the specific circumstances foreseen by can. 1344, mitigate the penalty to be imposed, even if it is a mandatory penalty. This is allowed, only, in the cases strictly foreseen by the legislator and not in other circumstances. In concrete terms, the law grants the Authority which, once the process has been completed, is responsible for making a decision, the following powers to be adopted prudently:

1°) to defer the infliction of the penalty to a more opportune time – fixed or to be established at a later time, if it foresees that greater evils may arise from a too hasty punishment. However, this is allowed

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61. Can. 1344 - Even though the law may use obligatory words, the judge may, according to his own conscience and prudence: 1° defer the imposition of the penalty to a more opportune time, if it is foreseen that greater evils may arise from a too hasty punishment of the offender, unless there is an urgent need to repair scandal; 2° abstain from imposing the penalty or substitute a milder penalty or a penance, if the offender has repented, as well as having repaired any scandal and harm caused, or if the offender has been or foreseeably will be sufficiently punished by the civil authority; 3° may suspend the obligation of observing an expiatory penalty, if the person is a first-offender after a hitherto blameless life, and there is no urgent need to repair scandal; this is, however, to be done in such a way that if the person again commits a delict within a time laid down by the judge, then that person must pay the penalty for both offences, unless in the meanwhile the time for prescription of a penal action in respect of the former offence has expired.

only in cases where there is no urgent need to repair the scandal caused by the delict (can. 1344, 1°). Such a decision could lead, for example, to an ascertained state of depression experienced by the offender;

2°) the Authority can also not impose any penalty or inflict a lesser penalty than the one indicated or, even, impose only a penance (cf. n. 56), if the offender has already reformed himself or if he has already been sufficiently punished by civil authority for the delict, on condition always that the scandal caused and any damage caused by the delict have been repaired (can. 1344, 2°);

3°) finally, in the event that the offender has a clean record, that is, that he has committed a delict for the first time after a previous honorable conduct, the Authority can also suspend the expiatory penalty, provided that it is not urgent to repair the scandal which has been caused. In this case, the suspension is conditional on the non-commission of another delict within the period of time established by the Authority. In fact, if the offender does not comply with this condition and therefore commits another delict within the fixed period of time, he will necessarily have to be punished for both delicts, unless the passage of time has led to the limitation of the penal prosecution relating to the first delict (can. 1344, 3°).

62. *Circumstances in which the Authority may decide not to impose any penalty* (can. 1345)

Alongside the faculties described above, can. 1345 grants those who have to judge the possibility of absolutely abstaining from inflicting a penalty if the investigation carried out reveals that the offender,

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62. Can. 1345 - Whenever the offender had only an imperfect use of reason, or committed the delict out of necessity or grave fear or in the heat of passion or, without prejudice to the provision of can. 1326 §1 n. 4, with a mind disturbed by drunkenness or a similar cause, the judge can refrain from inflicting any punishment if he considers that the person's reform may be better accomplished in some other way; the offender, however, must be punished if there is no other way to provide for the restoration of justice and the repair of any scandal that may have been caused.

at the time of committing the delict, had insufficient control of himself, and it is believed that it could be better to amend it in other ways. This would be a faculty granted to those who judge to make certain "mitigating" circumstances fully operational (see n. 23), evaluating them in the context of the other circumstances present in the delict and within the limits indicated in can. 1345.

There are three requirements which, according to can. 1345, must concur simultaneously in order to be able to proceed in this way: 1° that the lack of interior freedom of the subject responds to one of the circumstances foreseen by the canon itself; 2° that it is believed that there is a better way to obtain the offender's amends, perhaps by making use of penal remedies or penance or in another way; and 3° that it is possible to provide in another way to restore justice and repair the scandal caused.

The lack of personal mastery or internal freedom at the time of the delict must come from one of the following extenuating circumstances(cf. n. 23): 1°imperfect use of reason, 2° state of necessity, 3° grave fear, 4° passionate impetus, 5° drunkenness or similar disturbance of the mind, not however artfully provoked to commit the delict: this intent in fact represents, in the new legislation, an aggravating circumstance (cf. n. 28).

In any case, as has been said, due reparation is a condition that the law does not want to give up. Consequently, it will not be possible to abstain from imposing the penalty if it is not deemed feasible to provide for the re-establishment of justice and the reparation of the scandal caused by other means. In the absence of such requirements, can. 1345 strictly orders the Authority to impose the sanction, declaring that he must punish the offender.

63. *How to proceed when the offender is culpable of several delicts?* (can. 1346)

In cases where the offender is tried for several delicts, the Code invites us to balance the demands of justice with those of mercy.

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63. Can. 1346 - §1. Ordinarily there are as many penalties as there are offences.

First, as a general criterion, it is established that it is necessary to impose as many penalties as the delicts committed, in order to punish each of them individually, regardless of whether they are repeated delicts of the same type or whether they are delicts of a different nature (can. 1346 §1). In the case of multiple delicts, however, if the result of the total accumulation of *ferendae sententiae* penalties to be imposed seems excessive, the prudent discretion of whoever has to judge is granted the right to limit the penalties to be inflicted within the "fair limits" deemed appropriate, always with the possibility of subjecting the offender to the penal remedy of supervision (cf. n. 54), particularly envisaged for cases of recidivism.

64. *Is it mandatory to admonish the offender before applying a censure?* (can. 1347)

To validly inflict a censure (cf. n. 5) it is necessary that the subject be warned in advance, at least once, so that he withdraws from his contumacious conduct. Obviously, these are censures to be inflicted *ferendae sententiae*. The prior warning therefore represents a condition of validity in the imposition of censures and, consequently, it must be communicated in the correct way, so as to be clear that it is a "formal warning" in legal terms; however, it must be kept in mind that the admonition is not necessary if a penal precept has previously been imposed on the subject (cf. n. 54). Furthermore, it is necessary to establish a suitable period of time for the subject to repent and change his conduct, necessary to be able to repent and change his attitude.

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§2. Nevertheless, whenever the offender has committed a number of offences and the sum of penalties which should be imposed seems excessive, it is left to the prudent decision of the judge to moderate the penalties in an equitable fashion, and to place the offender under vigilance.

64. Can. 1347 - §1. A censure cannot validly be imposed unless the offender has beforehand received at least one warning to purge the contempt, and has been allowed suitable time to do so.

§2. The offender is said to have purged the contempt if he or she has truly repented of the delict and has made suitable reparation for the scandal and harm, or at least seriously promised to make it.

Can. 1347 §2 indicates two requisites for it to be considered that the subject has withdrawn from the default, and therefore the censure that was intimated must not be imposed. The first is "true repentance" relating to the delict committed, which must be evaluated with pastoral prudence by the Authority. The second requirement is more objective and concerns the fact that the offender has already given reasonable reparation for the scandal and compensated for the damage caused or that, at least, he has seriously promised to do so.

65. *Possible precautions to be taken in case of acquittal of the offender* (can. 1348)

In the event that at the end of the disciplinary procedure no penal sanction is imposed on the subject, either because he is acquitted of the delict, or in application of the powers indicated above conferred on the person who has to judge (cf. n. 62), the law grants the Authority the ability to adopt certain measures, if it deems it appropriate, in order to provide for the personal good of the accused or also for the public good.

In such cases, taking into account the set of circumstances that contribute to the case (for example, the scandal caused in the community by the disclosure of the accused facts or the personal attitude of the subject) and the results that emerge during the investigation, the Ordinary of the investigated person can provide at his own discretion with punctual warnings to the subject, with prescriptions of a pastoral nature or, even, with penal remedies properly so called (cf. n. 54). However, these initiatives can only be adopted by the individual's own Ordinary, since both the judge of the judicial process and any other Ordinary who has judged him administratively have already concluded their task in declaring the acquittal of the subject or refraining from imposing a penalty on him.

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65. Can. 1348 - When an accused is acquitted of an accusation or when no penalty is imposed, the ordinary can provide for the welfare of the person and for the public good through appropriate warnings and other means of pastoral solicitude or even through penal remedies if the matter warrants it.

66. *How to choose the appropriate penalty when the nature of a penal sanction is not specified* (can. 1349)

When the penalty indicated in law for a delict is unspecified, the Authority that is judging - administratively or judicially - has the duty to evaluate at its discretion which penalty to impose, taking into account the circumstances of the case. The same can be said when it comes to the determination of the time and duration of expiatory penalties, which it is up to the Authority to establish.

In this regard, can. 1349 indicates two concrete criteria which in any case must guide the decision to be taken. First, as is reasonable, the Authority must ensure that the penalty is proportionally appropriate to the scandal caused and the damage deriving from the delict: this clarification is important, since neither the criterion of proportionality, nor the two concrete parameters for measuring it they were present in the 1983 discipline. Second, the canon asks whoever has to judge the need to act with temperance and moderation, so as not to inflict "penalties that are too severe, unless the gravity of the case absolutely requires it". In any case, when the penalty is indefinite, it is not possible to inflict perpetual penalties (cf. n. 59).

The provision does not give criteria for determining a penalty sanctioned by the Code indefinitely. This therefore is left to the prudent assessment of those who have to judge the proportional determination of indefinite sentences and the time limit of the sentence, taking into account the circumstances that contribute to the delict – mainly the aggravating ones (cf. nn. 27-28) and mitigating ones (see nn. 23-24) – and of the necessary balance between the specific objectives of the penalty according to can. 1311 §2: amends for the offender, reparation for the scandal, re-establishment of justice (cf. n.

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66. Can. 1349 - If a penalty is indeterminate, and if the law does not provide otherwise, the judge in determining the penalties is to choose those which are proportionate to the scandal caused and the gravity of the harm; he is not however to impose graver penalties, unless the gravity of the case really demands it. He may not impose penalties which are perpetual.

4). Even the offender's behaviour can sometimes be a guideline in determining the punishment: whether he has repented or not, if he denies facts that are obvious or even if he himself wants to present himself as a victim, against all evidence. Furthermore, the correspondence with similar situations already judged and punished by other neighbouring ecclesiastical Authorities should lead to the use of the sanctions imposed by them as important guiding measures (cf. n. 10).

67. *Obligation to assist a condemned cleric in need* (can. 1350)

Some of the canonical penalties provided for by law involve, in the case of clerics, the prohibition of carrying out activities - of exercising the office, the ecclesiastical ministry, etc. – to which the right remuneration to provide for one's livelihood is normally linked. Even if the modalities are very different, according to the countries and local traditions, the law entrusts to whoever has to judge the task of taking them into account when inflicting penal sanctions, so that the law established in can. 281 §1 for presbyters (and in can. 281 §3 for permanent deacons), to perceive what is necessary for an honest livelihood.

Therefore, both the judge in the sentence and the ecclesiastical Authority in the penal decree are bound not to impose penalties that could deprive the convict of what is necessary to be able to provide for his own needs (can. 1350).

A different particular case is represented by one who is criminally dismissed from the clerical state, towards which there is no longer the requirement of can. 281, there being however a certain moral duty that the Code takes into consideration in can. 1350 §2.

With regard to those who have been penally dismissed from the clerical state and are in an economic situation of real need, the law

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67. Can. 1350 - §1. In imposing penalties on a cleric, except in the case of dismissal from the clerical state, care must always be taken that he does not lack what is necessary for his worthy support.

§2. If a person is truly in need because he has been dismissed from the clerical state, the Ordinary is to provide in the best way possible, but not by the conferral of an office, ministry or function.

charges those who have been the Ordinary precisely to help the offender, in the best possible way, directly or through other people, maybe helping him find a job. At the same time, however, the law explicitly forbids - and this is another novelty of the new penal discipline - that persons punished by dismissal from the clerical state are entrusted with tasks of an ecclesiastical nature, such as offices, ministries, or other similar tasks, both at the diocesan and parish level, or of teaching and catechesis.

It should be noted, however, that the prohibitions just mentioned concern only persons discharged by canonical penalty, since in the case of loss of the clerical state through other forms established by law (by dispensation, for example), it will be necessary to follow the criteria established in regard by the competent Dicastery in addition to the normal criteria of prudence.

68. *Obligation of the offender to observe the penalties imposed everywhere* (can. 1351)

Unlike the laws dictated by the ecclesiastical authorities which, ordinarily, have a territorial character and are valid within the territorial jurisdiction of whoever promulgates them, penal sanctions have a personal character and are linked to the person wherever he goes. The subject is required to observe the penalty, even if he is in the territory of an ecclesiastical Authority other than the one who imposed penalty. Indeed, non-compliance with the imposed the penalty is, in itself, constitutive of a new delict (cf. n. 99).

Furthermore, the penalty that has been imposed does not cease to exist if the Authority that established it – with one of its laws or with a penal precept –, or the one who inflicted it, or whoever declared it, unless it has been established otherwise by law, he loses his office.

Instead, for the ecclesiastical Authorities that can remit the penalty imposed by another Authority, see nn. 72-75.

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68. Can. 1351 - A penalty binds an offender everywhere, even when the right of the one who established, imposed or declared it has ceased, unless it is otherwise expressly provided.

69. *Situations in which the penalty is suspended for pastoral reasons* (can. 1352)

In certain circumstances, in order to provide for the *salus animarum* or to preserve the honor of persons, the law suspends the obligation to observe a penalty already imposed, if it prohibits access to the sacraments. The suspension ceases when the circumstances that legitimized it change. Can. 1352 provides for two different situations.

First, the penalty which prohibits the reception of sacraments and sacramentals is always suspended during the period of time in which the condemned person is in danger of death. This suspension concerns all kinds of penalties, both those inflicted *ferendae sententiae* and those *latae sententiae* regardless of whether they have been declared or not (cf. n. 37).

Furthermore, provided that it concerns *latae sententiae* penalties not yet declared and which, in fact, are not known in the place where the subject lives, the obligation to observe the prohibition is also suspended, in whole or in part, "to the extent which the offender cannot observe [the punishment] without danger of grave scandal or infamy" (can. 1352 §2). In this case the suspension is quite broad and involves active situations (exercising the ministry) and also passive situations (approaching the sacraments), whenever scandal or infamy could result.

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69. Can. 1352 - §1. If a penalty prohibits the reception of the sacraments or sacramentals, the prohibition is suspended for as long as the offender is in danger of death.

§2. The obligation of observing a *latae sententiae* penalty which has not been declared, and is not notorious in the place where the offender actually is, is suspended either in whole or in part to the extent that the offender cannot observe it without the danger of grave scandal or loss of good name.

70. *Suspension of the sentence during the appeal or recourse* (can. 1353)

The punitive measures that put an end to the relative judicial or extrajudicial processes, i.e., the sentence or the penal decree, can always be subject to review by the competent superior instance eventually seized. In concrete terms, against penal judicial sentences, an appeal is made to the higher court according to the established procedural norms; in the case, however, of penal administrative decrees, recourse proceeds to the higher ecclesiastical Authority, which will normally be the corresponding Dicastery of the Roman Curia.

In these circumstances, can. 1353 establishes that, once the appeal or recourse has been initiated, the penalty imposed in the contested provision (sentence or decree) is suspended until the request is definitively resolved. The suspensive effect is immediate, and it will be necessary to wait for the definitive resolution for the penalty to be considered inflicted on the subject. However, taking into account the circumstances, any provisional measures taken against the subject are kept in place.

VI. Remission of penalties and competent authority

71. Remission of penalties and competent authority (Title VI)

So far, the ways in which to evaluate the set of circumstances that contribute to the delict and (in particular, how it is possible to evaluate the responsibility of the subject in order to be able to impose a just punishment) have been examined. Now it is necessary to understand how penalties once imposed can cease. Title VI of the first part of Book VI of the Code of Canon Law deals with this, before moving on to describe the canonical offences individually and concretely.

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70. Can. 1353 - An appeal or recourse from judicial sentences or from decrees, which impose or declare a penalty, has a suspensive effect.

71. Title VI of Part One of Book VI of the Code is entitled "The Remission of Penalties and Prescription of Actions" (*De poenarum remissione et actionum praescriptione*), and comprises cans. 1354-1363.

The cessation of the sentence entails, as has been said, the elimination of the personal bond which entails every penal sanction (cf. n. 68). Regardless of natural causes (death of the offender), the normal way to extinguish the bond of the penalty is the fulfilment of the prescribed sentence by the offender. However, there are certain legal causes that have the same consequence: for example, the promulgation of a milder law (cf. n. 7) or the limitation of prosecution due to the elapsed time, with the consequent non-punishability of the delict (cf. nn. 83-84). Furthermore, the penalty can cease due to a new intervention by the ecclesiastical Authority which establishes, in fact, the remission of the penalty.

Before moving on to the discussion of individual canonical offences, let us consider below which Authorities can remit canonical penalties and under which conditions; finally, it will be seen in which circumstances the passage of time that extinguishes the penal action and therefore the possibility of punishing a concrete delict operates.

72. *General criteria on the Authority that can remit canonical penalties* (can. 1354)

Can. 1354 begins by indicating, as a general criterion, who has the capacity to remit canonical sanctions. As a rule of principle, a penalty can be remitted by "all who can dispense from a law which is supported by a penalty, or excuse from a precept which threatens a penalty". In concrete terms, the person who established the penal norm (that is, promulgated the law or given the penal precept), as well as his successors in office, as well as his superiors or their delegates, can always remit the sentence. Possibly, other subjects indicated in the same law or in the penal precept can also remit the sentence.

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72. Can. 1354 - §1. Besides those who are enumerated in cans. 1355-1356, all who can dispense from a law which is supported by a penalty, or excuse from a precept which threatens a penalty, can also remit the penalty itself.

§2. Moreover, a law or precept which establishes a penalty can also grant to others the power of remitting the penalty.

§3. If the Apostolic See has reserved the remission of a penalty to itself or to others, the reservation is to be strictly interpreted.

Consequently, this general criterion does not include any diocesan Bishop: the latter, in principle, have no capacity to dispense from penal laws (cf. can. 87 §1), unless it is a universal law of the Church, or recourse to the Holy See is difficult, there is a risk of serious harm, and the matter is dealing with matters which the Apostolic See usually dispenses (can. 87 §2): conditions which are difficult to find together when dealing with penal matters. Furthermore, the incapacity to dispense also applies when dealing with delicts whose remission the Holy See has reserved for itself or has entrusted to other subjects (can. 1354 §3).

nn. 73-75, speak of other subjects who can remit the canonical penalties in specific circumstances.

73. *Other subjects who can remit penalties established by law* (can. 1355)

Penalties given *ferendae sententiae*, and also those formally declared *latae sententiae*, when they have been imposed on the basis of a law (i.e., not inflicted with a penal precept), can be remitted, not only by the Authority that issued it and of those just indicated (cf. n. 72), by the two subjects indicated in the first part of can. 1355: 1° the Ordinary who initiated the trial to inflict or declare the penalty (cf. can. 134 §1), or who inflicted or declared it by administrative decree, personally or through delegated persons; 2° the Ordinary of the place where the delinquent is found (cf. can. 134 §2), after however having

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73. Can. 1355 - §1. Provided it is not reserved to the Apostolic See, a penalty established by law which is *ferendae sententiae* and has been imposed, or which is *latae sententiae* and has been declared, can be remitted by the following: 1° the Ordinary who initiated the judicial proceedings to impose or declare the penalty, or who by a decree, either personally or through another, imposed or declared it; 2° the Ordinary of the place where the offender actually is, after consulting the Ordinary mentioned in n. 1, unless because of extraordinary circumstances this is impossible.

§2. Provided it is not reserved to the Apostolic See, a penalty established by law which is *latae sententiae* and has not yet been declared can be remitted by the following: 1° the Ordinary in respect of his subjects; 2° the Ordinary of the place also in respect of those actually in his territory or of those who committed the delict in his territory; 3° any Bishop, but only in the course of sacramental confession.

consulted the Ordinary who had initiated the trial or decreed the penalty.

Instead, if it is a question of a penalty that is still in the internal forum, because it comes from a *latae sententiae* sanction that has not been formally declared and is not reserved to the Holy See, it can be remitted: 1° by the Ordinary, against the own subjects (cf. can. 134 §1); 2 ° by the local Ordinary (cf. can. 134 §2), with regard to those who are in his territory or have committed a delict there; 3° by any Bishop, but only in the act of confession, that is, "in the internal sacramental forum".

If, on the other hand, it concerns *latae sententiae* penalties reserved to the Holy See, there is always the possibility of requesting remission from the Apostolic Penitentiary through recourse through the confessor or in any case within the internal forum.

74. *Subjects who can remit penalties inflicted with a penal precept* (can. 1356)

On the other hand, when it comes to penalties that have been inflicted (both *ferendae sententiae* and *latae sententiae*) on the basis of a penal precept that had been legitimately inflicted on the subject (cf. n. 55), the remission of the sanctions imposed can be done: 1 ° by the author of the precept himself, even if this provision was not explicitly indicated in the 1983 legislation; 2° by the Ordinary (cf. can. 134 §1) who has promoted the sanctioning procedure to inflict or declare the penalty (judicial or administrative), directly or through his own delegates; 3° the Ordinary of the place (cf. can. 134 §2) in which the delinquent is found.

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74. Can. 1356 - §1. A *ferendae* or a *latae sententiae* penalty established in a precept not issued by the Apostolic See, can be remitted by the following: 1° the author of the precept; 2° the Ordinary who initiated the judicial proceedings to impose or declare the penalty, or who by a decree, either personally or through another, imposed or declared it; 3° the Ordinary of the place where the offender actually is.

§2. Before the remission is granted, the author of the precept, or the one who imposed or declared the penalty, is to be consulted, unless because of extraordinary circumstances this is impossible.

Obviously, this capacity for remission does not apply penal precepts directly imposed by the Holy See: in this case, only the latter has the faculty to remit the sentence on the subject.

In all cases, however, as an elementary rule of prudence, the law imposes on the ecclesiastical Authority, which intends to carry out any remission of the censure, the duty to consult in advance the author of the penal precept that has been given to the offender, or the Authority who subsequently declared or imposed the penalty, in order to adequately assess the correctness of the remission itself. One is exempted from this when in extraordinary circumstances it is not possible to carry out the consultation, even if it is not required for the validity of the remission of the censure.

75.*Remission of censures by the confessor* (can. 1357)

In addition to what has just been said about the remission of *latae sententiae* penalties in the internal forum (cf. n. 73), it should be added that the law also grants normal confessors the possibility of intervening in these cases and procuring remission of the aforementioned sanctions.

Confessors, as it is known, do not ordinarily possess the jurisdictional power to remit penal sanctions. This faculty belongs only to those who hold certain offices, such as penitentiaries, some canons, as

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75. Can. 1357 - §1. Without prejudice to the provisions of cans. 508 and 976, a confessor can in the internal sacramental forum remit a *latae sententiae* censure of excommunication or interdict which has not been declared, if it is difficult for the penitent to remain in a state of grave sin for the time necessary for the competent Superior to provide.

§2. In granting the remission, the confessor is to impose upon the penitent, under pain of again incurring the censure, the obligation to have recourse within one month to the competent Superior or to a priest having the requisite faculty, and to abide by his instructions. In the meantime, the confessor is to impose an appropriate penance and, to the extent demanded, to require reparation of scandal and harm. The recourse, however, may be made even through the confessor, without mention of a name.

§3. The same duty of recourse, when the danger has ceased, binds those who in accordance with can. 976 have had remitted an imposed or declared censure or one reserved to the Holy See.

well as cardinals or Bishops, under the conditions established by the discipline of the Church. Confessors have the capacity to forgive sins in the sacrament of Penance (in the Latin discipline there are no reserved sins). However, for pastoral needs of *salus animarum*, they can also remit in certain circumstances "censures" inflicted *latae sententiae*, and not yet declared.

This kind of remission takes place exclusively in the context of the sacrament of Penance, that is, in the internal sacramental forum, when the penitent confesses a sin classified as a delict which automatically entails a *latae sententiae* sanction.

In these circumstances, the confessor is required to demonstrate to the penitent the need to seek absolution and penance from the competent Authority, but if the penitent suffers spiritually because he cannot receive the sacrament, the confessor is authorized to absolve him from a censure, under two conditions.

First, the penitent must appeal to the Authority that has the jurisdiction to absolve the censure within the term of one month, so that this Authority can grant the due penance. The confessor himself can offer to make this request to the Authority anonymously, and in this case the penitent must promise to return to the confessor so that he can communicate the response received. In these circumstances, if the penitent does not undertake to fulfill these duties without a justified reason, he falls under the censure, even though the sacrament received is valid in an absolute form and the sin has been forgiven.

The other condition in these cases is, however, the duty of the confessor to impose a suitable penance at that moment which the penitent will have to accept, taking the decision in any case to repair both the damage and the scandal caused to the community.

In order for the confessor to be able to operate in this area, the censure must remain in the internal forum and not be passed to the external forum as "declared" by some legitimate Authority (cf. n. 37). Furthermore, the capacity granted by can. 1357 §1 only concerns the confessor with the censures of excommunication and interdict. However, it does not concern any suspension.

Finally, it should be noted that can. 1357 §3 determines that the same duty of having recourse to the competent Authority to absolve censures concerns those who, in danger of death, have been absolved of censures by any priest, on the basis of can. 976. Once the danger has ended, the subject is required to request the remission of the censure, normally availing himself of the intermediation of the priest chosen by him.

76. *Requirements for absolving censures in the external forum* (can. 1358)

As has been said, canonical censures are of a "medicinal" purpose (cf. n. 34) and, consequently, in order to grant their remission, it is necessary to verify that this purpose has been achieved. In this perspective, can. 1358 §1 establishes some operational criteria.

First, for the remission of censures a necessary requirement is that the delinquent has previously withdrawn from bad behaviour, within the terms indicated in can. 1347 §2 (cf. n. 64). In fact, without such a change of behaviour, it would be logical to assume that the penalty has not yet reached its goal, namely the reform of the offender.

Second, the provision adds an imperative mandate for the Authority: once the offender's conversion has been ascertained, he cannot refuse to remit the censure. In reality, the cessation of the bad behaviour gives rise precisely to a right to acquittal, which however depends in turn on another requirement recently introduced.

In fact, as a novelty, there is now a new condition whose presence will have to be assessed by the Authority himself. The norm (can. 1361 §4) indicates that the censure must not be absolved if, in the opinion of the Ordinary who should absolve, the offender has not repaired the damage caused (cf. nn. 80-81). It is obvious, however, that the

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76. Can. 1358 - §1. The remission of a censure cannot be granted except to an offender whose contempt has been purged in accordance with can. 1347 §2. However, once the contempt has been purged, the remission cannot be refused, without prejudice to the provision of can. 1361 §4.

§2 The one who remits a censure can make provision in accordance with can. 1348, and can also impose a penance.

presence of this circumstance must be evaluated pastorally, taking into consideration the good dispositions of the subject, and according to the social impact that such a decision could have.

In all cases in which, after observing the requirements indicated above, the Authority proceeds to remit an inflicted or declared censure to the external forum, the law grants the faculty to "replace" it with other less severe remedies or sanctions. In this way an attempt is made to somehow balance, on the one hand, the pastoral need to facilitate access to the sacraments, usually prohibited by the censures, and on the other hand the need to satisfy the various purposes of canonical penalties (cf. n. 4). Consequently, the Authority which remits the censure is authorized by law to impose other penal remedies at the same time as the remission (see n. 54), admonitions or penance (see n. 56), so that justice is served, especially if at the time of imposing or declaring the censure, no expiatory sanctions were intimated, as recalled by n. 41.

77. *Remission of sanctions in circumstances where there are several sentences* (can. 1359)

Another question concerning the remission of penalties arises when there are several penal sanctions to which a person is bound. Indeed, the possibility exists that in such cases only some penalties are remitted, while the subject continues to be bound by the others. Can. 1359 sets out the criteria for ascertaining which penalties are remitted and which are not.

According to this norm, remission only concerns the penalties mentioned by the Authority in the act of remission which (cf. n. 79) normally follows a specific request from the subject with a specific indication of each of them. If, on the other hand, the Authority has granted a general remission, all the penalties mentioned by the person in his request must be deemed to be remitted, and those which the person has concealed "in bad faith" must not be remitted.

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77. Can. 1359 - If one is bound by a number of penalties, a remission is valid only for those penalties expressed in it. A general remission, however, removes all penalties, except those which in the petition the offender concealed in bad faith.

78. *Invalidity of the remission extorted by illicit means* (can. 1360)

The remission of penalties is an act of jurisdiction that can only be performed by the competent ecclesiastical authority. In order to be valid and effective, therefore, he must comply with the minimum requirements of validity laid down by Church law, in particular can. 125 of the Code. According to this rule, acts of remission performed by violence (physical or moral) are null and void, and acts of remission performed under grave fear unjustly induced or extorted maliciously can be annulled.

Similarly, referring specifically to the remission of canonical penalties, can. 1360 declares null and void *ipso iure* the remission of a penalty extorted by force or grave fear or deceit. It is therefore necessary that remission of the penalty be an act done by the pastor with due freedom, without unjust conditioning (physical or moral), so that he can autonomously assess the set of circumstances involved in the remissive act.

In this regard, the new penal discipline has widened the validity requirements of the previous legislation of 1983, which referred only to grave fear. The current version of the norm follows can. 1421 of the *Codex Canonum Ecclesiarum Orientalium* of 1990.

79. *Procedure for granting remission* (can. 1361)

Remission of a penalty, therefore, represents a legal act that must observe the rules established by law to be effective. In concrete terms,

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78. Can. 1360 - The remission of a penalty extorted by force or grave fear or deceit is invalid by virtue of the law itself.

79. Can. 1361 - §1. A remission can be granted even to a person who is not present, or conditionally.

§2. A remission in the external forum is to be granted in writing, unless a grave reason suggests otherwise.

§3. The petition for remission or the remission itself is not to be made public, except in so far as this would either be useful for the protection of the good name of the offender, or be necessary to repair scandal.

§4. Remission must not be granted until, in the prudent judgement of the Ordinary, the offender has repaired any harm caused. The offender may be urged to make

the remission of a penalties may be granted to an absent person. It could also be done through an intermediary, perhaps even in a territory not subject to the remitting authority, but who naturally has the capacity to do so, according to nn. 72-74. In fact, all the remissions indicated in n. 75 takes place through the intermediary of the confessor.

Furthermore, remission can also be granted conditionally, if the authority sees fit to set certain conditions for such an act.

When, on the other hand, it is a question of remitting canonical penalties in the external forum, the concession must be made in writing, following the general criteria indicated in cans. 48-51 for carrying out administrative acts, unless, in the judgement of the Authority that remits the penalty, there is a serious cause for not doing so. It is up to the same Authority to assess the presence of such a circumstance. Proceeding with remission in writing is in fact necessary for legal certainty because it fixes the content of the act of remission (cf. n. 77), to the benefit of both the subject and the Authority.

Can. 1361 §3 also requires extreme caution in spreading the news of a remission that has taken place, and provides two parameters for this: firstly, it is necessary to proceed in the most useful way to protect the reputation of the offender; secondly, it is also necessary to act in accordance with what is best to repair the scandal caused. Sometimes, in fact, it will be necessary to involve some publicity in the process, and at other times, on the other hand, depending on the two parameters indicated, confidentiality may be appropriate, provided this is not contrary to justice.

80. *Reparation as a requirement for remission in the external forum* (can. 1361 §4)

As has already been seen on several occasions, the revision of Book VI took particular account of the need to repair the scandal and any

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such reparation or restitution by one of the penalties mentioned in can. 1336 §§2-4; the same applies also when the offender is granted remission of a censure under can. 1358 §1.

80 Cf. *Ibid.*

other damage caused by the delicts (on the notion of scandal, Cf. *Catechism of the Catholic Church* n. 2284). Consequently, it introduced the reparation of the damages caused as a requirement (which not present in the previous legislation) for the remission of canonical penalties, whether expiatory or censures. It is up to the Ordinary to evaluate whether to remit a penalty related to *latae sententiae* or *ferendae sententiae* penalties that have been declared or not. For the remission of penalties to be legitimate, the Authority with the capacity to remit it (see nn. 72-74) must assess whether the offender has repaired the scandal, or the damage caused by the delict.

Naturally, in carrying out this evaluation, the Authority must proceed with pastoral sensitivity, taking into consideration the dispositions of the subject and the repercussions of the remission on the community. If the dispositions of the subject are good, even if the reparation has not yet been completed, remission could be granted (above all, if it concerns a censure, as mentioned in n. 76), if it is reasonable to trust the commitment of the subject and if this cannot cause scandal or other damage.

This condition concerns only the external forum. In the internal sacramental forum, the dispositions of can. 1357, which have not undergone any changes, must be observed (cf. n. 75). However, even in the internal forum, the confessor will have to ascertain the effective disposition of the subject to repair the consequences of the delict in the best possible way.

In any case, the rule regarding reparation and restitution was also given with the aim of preventing the offender from making profits from his bad behaviour. However, when circumstances do not allow for full reparation, it will be necessary to determine how to fulfill this requirement, at least symbolically or indirectly, through works of charity, etc.

81. *Means for forcing an offender to reparation* (can. 1361 §4)

In order to bring the delinquent to carry out the acts of reparation or restitution that have been imposed on him, the new penal discipline grants the Ordinaries a "coercive" instrument that was previously absent from canonical norms. In this sense, can. 1361 §4 allows the competent Ordinary to impose on the offender, who without just cause postpones reparation or opposes the obligations to which he is subjected, new expiatory penalties mentioned in can. 1336 (cf. n. 44) in addition to those imposed for the delict as such.

Even if this faculty is defined in can. 1361 which mainly deals with the remission of penalties, the ability to impose such sanctions to compel reparation does not occur only in view of a request for remission. In fact, this faculty can also be employed in the case in which the absolution of a "censure" has already been granted to the offender, as specified in the final part of can. 1361 §4.

The new additional penalties, given to compel reparation, must necessarily be imposed through an administrative decree (can. 1361 §4, in fact, speaks only of the Ordinary), and do not require the initiation of further procedures other than those established in general for administrative acts (cf. cans. 48-58). Eventually, they can be imposed progressively, with successive injunctions, until an adequate response from the offender is obtained, given that in any case it is possible to resort to the use of penal precepts in such cases (cf. n. 55).

82. *Extinction of the penal action by prescription* (can. 1362)

Having examined the mechanisms for requesting and obtaining from the Authority the remission of penal sanctions, it is necessary to

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81. Cf. *Ibid.*

82. Can. 1362 - §1. A criminal action is extinguished by prescription after three years, except for: 1° offences reserved to the Congregation for the Doctrine of the Faith, which are subject to special norms; 2° without prejudice to n. 1, an action arising from any of the delicts mentioned in cans. 1376, 1377, 1378, 1393 §1, 1394, 1395, 1397, or 1398 §2, which is extinguished after seven years, or one arising from the

mention lastly the ways in which the passage of time can cause a delict not to be punished.

The meaning of the prescription is precisely this: the excessively elapsed time causes the response of justice to move away from the criminal facts, decreasing the possibilities of an effective and just judgment and creating a growing difficulty in ascertaining and reconstructing the events. The re-establishment of justice, the possibility of repairing the scandal and the damage caused are effective if the Authority's decision does not take place in a period too distant from the commission of the delict, and the same happens with respect to the offender's amends. Therefore, the law has outlined the legal institution of the "prescription", that is, of the time limit after which a delict is no longer prosecutable, at least in ordinary circumstances, because the time is fulfilled for the exercise of the penal action and the Authority is no longer authorized to punish. This also a mechanism used to protect the rights of the accused, who could not defend himself properly if he is accused of facts that are too distant in time, on which memory has reasonably been lost.

In this regard, the new penal discipline maintains the three-year term for the prescription of canonical offences in general (can. 1362 §1) unless there is a different and specific prescription. Different treatment is reserved for certain categories of delict: 1° the delicts reserved to the Dicastery for the Doctrine of the Faith are subject to

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delicts mentioned in can. 1398 §1, which is extinguished after twenty years; 3° offences not punished by the universal law, where a particular law has prescribed a different period of prescription.

§2. Prescription, unless provided otherwise in a law, runs from the day the delict was committed or, if the delict was enduring or habitual, from the day it ceased.

§3. When the offender has been summoned in accordance with can. 1723, or informed in the manner provided in can. 1507 §3 of the presentation of the petition of accusation according to can. 1721 §1, prescription of the criminal action is suspended for three years; once this period has expired or the suspension has been interrupted through the cessation of the penal process, time runs once again and is added to the period of prescription which has already elapsed. The same suspension equally applies if, observing can. 1720 n. 1, the procedure is followed for imposing or declaring a penalty by way of an extra-judicial decree.

special norms also concerning the prescription (can. 1362 §1, 1°); 2° the delicts indicated in cans. 1376, 1377, 1378, 1393 §1, 1394, 1395, 1397 and 1398 §2 now have a limitation period of seven years, while the previous legislation provided for five years in many cases (can. 1362 §1, 2°); 3° the delicts indicated in can. 1398 §1 concerning the abuse of minors by clerics have a prescription of twenty years (cf. nn. 159-160).

When dealing with delicts established by particular law, it will be necessary to follow the prescription rules indicated therein (can. 1362 §1, 3°).

For the counting of the statute of limitations, the computation usually starts on the day on which the delict is committed, even if the law may establish a different start. Such is the case of the delicts of abuse of minors by clerics reserved for the Dicastery for the Doctrine of the Faith, in which case, as indicated in art. 8 §2 of the NSST, it is indicated that "prescription begins to run from the day on which the minor has turned eighteen".

83. *Extinction of the penal action by peremption* (can. 1362)

Similar to the institution of the "prescription" is that of the "peremption", and it re-looks at the effect of the time elapsed once the cause has started, when the procedure slows down or even becomes paralyzed, without a final decision being reached.

In fact, when a penal procedure (administrative or judicial) which is duly initiated, remains static for a significant period of time – the time now established by can. 1362 §3, with a general character, for each type of delict it is three years -, unjust damage is caused to the accused, which the law seeks to remedy. To this end, this provision (which is new in the Code) establishes that, if the lawsuit is not over, after three years have elapsed from its initiation, the limitation period for the delict that was interrupted at the time of the citation of the offender starts to run again (according to the norm of can. 1723, or from the moment in which he was informed in the manner foreseen

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83. Cf. *Ibid.*

by can. 1507 §3 of the presentation of the *libellus* of accusation according to the norm of can. 1721 §1). The new passage of time is in addition to the time elapsed from the commission of the delict to the citation of the offender, for the purposes of computing the statute of limitations as set forth in n. 82 (cf. n. 84).

The norm of peremption after three years is equally valid for an extrajudicial penal procedure (can. 1362 §3).

Finally, as will be seen below, the penal action is extinguished in the same way if the sentence or the conviction decree is not enforced before the statute of limitations expires, regardless of the reasons for this failure.

84. *Prescription of the penal action for failure to notify the sentence* (can. 1363)

The last rule of the general part concerning the penal discipline completes in some way what has been said on the effect that the passage of time has on the actions that the Authority can carry out to punish a delict.

In fact, the judicial sentence (or administrative decree) which puts an end to the sanctioning provision must be notified to the offender by means of a decree according to the methods and requirements established by law (cf. can. 1651), so that the subject feels bound to submit to the imposed punishment. Therefore, if the sanctioning decision is not communicated to him, starting from the specific moment indicated in can. 1362 §1, the punitive action is also extinguished because of the prescription.

This occurs for an effect similar to that of the foreclosure indicated in n. 83. After three years from the moment in which the conviction

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84. Can. 1363 - §1. Prescription extinguishes an action to execute a penalty if the offender is not notified of the executive decree of the judge mentioned in can. 1651 within the time limits mentioned in can. 1362; these limits are to be computed from the day on which the condemnatory sentence became a *res iudicata*.

§2. Having observed what is required, the same is valid if the penalty was imposed by extrajudicial decree.

sentence is closed and can no longer be appealed (or the administrative decree cannot be the subject of further appeal), the limitation period begins to run again, according to the time elapsed between the commission of the delict and the summons of the offender who initiated the case.

In this regard, however, it should finally be noted that in can. 1371 §5, the new delict of those who do not observe the duty to carry out an executive penal sentence or decree is configured (cf. n. 102).

PART II

PARTICULAR DELICTS AND THE PENALTIES ESTABLISHED FOR THEM

85. *Particular delicts established by the Code*

Part II of Book VI of the Code individually describes all canonical delicts which in the entire ambit of the Church must be punished and sanctioned according to what is prescribed by the universal norms. The new penal discipline has incorporated in this second part all the delicts that were punishable by universal law but not yet included in the Code, except for those specifically indicated in the discipline relating to the election of the Roman Pontiff in the Conclave. However, it must be kept in mind that, alongside the delicts indicated below, the Supreme Authority of the Church could add others over time. There are also delicts legitimately established by particular law, both by individual Bishops and by Episcopal Conferences (cf. n. 9).

I. DELICTS AGAINST THE FAITH AND THE UNITY OF THE CHURCH

86. *Delicts against the faith and the unity of the Church* (Title I)

In Title I, delicts against the faith and unity of the Church have been specifically grouped together, and not simply those that, more generically, were considered as delicts against "religion", as the 1983

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85. Part II of Book VI of the *CIC* is entitled "Particular offences and the penalties established for them" (*De singulis delictis deque poenis in eadem constitutis).* In the 1983 discipline, the section was entitled "Penalties for individual offences". This Part II comprises cans. 1364-1399, grouped into seven different Titles according to the different juridical good of the Church they are intended to protect.

86. In the epigraph of Title I (cans. 1364-1369) of this Part II only "against religion" has been changed to "against faith", in correspondence with the canons that now supplement the Title.

penal discipline indicated. In this way, the discipline wished to identify more precisely what is the ecclesial good that needs to be protected through these delicts (faith and unity) and, as a result, it was deemed necessary to move some canons that were previously placed in other Titles for the sake of consistency, sometimes without the need to change the text itself.

87. *Delicts of apostasy, heresy, and schism* (can. 1364)

Can. 751 indicates what the three delicts of apostasy, heresy and schism consist of. Heresy is "the obstinate denial or obstinate doubt after the reception of baptism of some truth which is to be believed by divine and Catholic faith". Apostasy is "the total repudiation of the Christian faith". The schism consists in the "the refusal of submission to the Supreme Pontiff or of communion with the members of the Church subject to him".

For the existence of these delicts the following requisites are necessary: (a) the manifestation of an external behaviours attributable to the subject (cf. n. 18) (b) an identifiable declarations or expressions of will (cf. n. 32), (c) an inevitable impact of the delict on the community.

The penalty for those who commit these delicts is excommunication *latae sententiae* (cf. nn. 35-37). These three delicts also entail the *ipso iure* loss of the ecclesiastical office which the subject may hold (cf. can. 194). Furthermore, the Authority that declares excommunication *latae sententiae* can also impose other expiatory penalties that he deems just (cf. nn. 45-47). Other expiatory penalties can possibly be added to these, if the gravity of the scandal or persistent stubbornness so requires, not excluding dismissal from the clerical state (can. 1364 §2).

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87. Can. 1364 - §1. An apostate from the faith, a heretic or a schismatic incurs a *latae sententiae* excommunication, without prejudice to the provision of can. 194 §1 n. 2; he or she may also be punished with the penalties mentioned in can. 1336 §§2-4.

§2. If a long-standing contempt or the gravity of scandal calls for it, other penalties may be added, not excluding dismissal from the clerical state.

The three delicts of apostasy, heresy and schism are reserved exclusively to the Dicastery for the Doctrine of the Faith, according to the motu proprio *Sacramentorum sanctitatis tutela*, dated April 30, 2001 (SST), as amended. According to art. 2 §2 of the Norms on Delicts Reserved to the Congregation for the Doctrine of the Faith, as amended by the *Rescriptum ex Audientia SS.mi* of Oct. 11, 2021 (NSST), in the Latin Church it is up to the Ordinary "to carry out the judicial process in the first instance or extrajudicially by decree, without prejudice to the right of appeal to the Congregation for the Doctrine of the Faith."

88. *Teaching a condemned doctrine* (can. 1365)

Distinct from the indicated delicts that have just been mentioned, particularly concerning the personal adherence to certain doctrines, verbally or by one's own conduct, the following can. 1365 outlines the delict of those who "teach" doctrines that have been condemned by the Supreme Pontiff or by an Ecumenical Council and which, consequently, must be accepted with Catholic faith by all the faithful.

This delict entails two requirements: 1° that there be the teaching of a condemned doctrine, which can take place in a didactic context, or through conferences or publications; 2° furthermore, the pertinacity of the subject is required, and the will not to retract in the face of the necessary admonition from the Holy See or the Ordinary, which are a necessary requirement for this delict to be punished.

Such a delict must be mandatorily punished: if the person does not withdraw from error, he must be punished by censure (cf. nn. 34 ff.) and by deprivation of ecclesiastical office (cf. can. 196), if he holds it.

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88. Can. 1365 - A person who, apart from the case mentioned in canon 1364 §1, teaches a doctrine condemned by the Roman Pontiff, or by an Ecumenical Council, or obstinately rejects the teaching mentioned in canon 750 §2 or canon 752 and, when warned by the Apostolic See or the Ordinary, does not retract, is to be punished with a censure and deprivation of office; to these sanctions others mentioned in can. 1336 §§2-4 may be added.

In addition, depending on the circumstances, other expiatory punishments indicated in can. 1336 §§ 2-4 (cf. nn. 42 ff.) may be added to these penalties.

89. *Pertinacious rejection of a doctrine taught by the Magisterium* (can. 1365)

The same can. 1365 defines another different delict: the "pertinacious refusal" of the doctrine proposed in a definitive way by the teaching of the Church (cf. can. 750 §2), or the lack of religious obedience towards the authentic magisterium of the Supreme Pontiff or the College of Bishops (cf. can. 752).

Also in this case, for the configuration of the delcits, the same requirements previously indicated apply: 1° that there is a formal rejection of this doctrine, which must in some way be manifested externally in order for it to constitute a delict (cf. n. 32); 2° that the subject's pertinacity is manifested in the unwillingness to retract his position in the face of the necessary admonitions from the Holy See or the Ordinary. Here too, the admonition is a requirement for the delict to be punished. The sanctions envisaged for this offence are the same as indicated in the previous number (cf. n. 88).

90. *Appeal to the Episcopal College against pontifical acts* (can. 1366)

It also represents a delict against the unity of the Church to lodge recourse or appeal against an act of the Roman Pontiff before the Episcopal College (can. 336), whether meeting in an Ecumenical Council or not (can. 337). This behaviour disregards the supreme authority of the Pontiff and reveals the will to oppose it by opposing that of the Episcopal College, in contrast with the doctrine of can. 330, demanding that it be judged by an instance that is neither superior nor dissociable from the Roman Pontiff.

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89. Cf. *Ibid.*

90. Can. 1366 - A person who appeals from an act of the Roman Pontiff to an Ecumenical Council or to the College of Bishops is to be punished with a censure.

For the delict to exist, the appeal must be formally carried out at least as an attempt. In addition, the concept of acts of the Supreme Pontiff must also include all those which clearly and in writing result to be specifically approved by him.

Against this offence it is obligatory to impose as a criminal sanction an appropriate censure (see nn. 34 ff.), which it will be up to the competent Authority to assess to punish the delict, according to the circumstances.

91. *Baptism or education of children in a non-Catholic religion* (can. 1367)

For a Catholic – one should bear in mind that all delicts concern only baptized Catholics - it is a delict to have one's children voluntarily baptized according to a non-Catholic confession, as well as to have them educated according to a religion other than the Catholic one. The delict violates the duty to educate children according to one's faith (can. 793).

The delict concerns both parents and also those who possibly exercise parental authority over the children or are adoptive parents. In order for the behaviour to constitute a delict, this option must have been made on a voluntary basis, and specifically concern religious formation. The delcit is not committed, however, for the simple choice of a non-Catholic school: in this case it will be up to the parents to use the necessary means to safeguard Christian formation.

The Ordinary will evaluate the penalty to be inflicted on the parents or the culpable: according to the circumstances, he can opt between a censure (see nn. 34 ff.) or an expiatory penalty (see nn. 42 ff.).

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91. Can. 1367 - Parents and those taking the place of parents who hand over their children to be baptised or brought up in a non-Catholic religion are to be punished with a censure or other just penalty.

92. *Blasphemy, immorality, insults or inducing hatred or contempt against religion or the Church* (can. 1368)

Can. 1368, which has not been modified with respect to the previous discipline, punishes a plurality of delicts contrary to the faith or to unity, carried out in public gatherings or meetings, or through writings and publications or through the various communication systems (radio, television, cinema, web or other), capable of constituting the delict.

In all these cases, the delict consists in using these public methods of expression to: 1° utter blasphemies, 2° gravely harm public morals, 3° pronounce insults against religion or the Church, 4° excite hatred or contempt against religion or the Church.

The competent Ordinary is obliged to punish this kind of behaviour: consequently, in this case he does not enjoy the discretion to punish or not to punish, although he will always have to consider the faculties indicated in nn. 61 and 62. The Ordinary who must act is, above all, that of the place where the delict occurred, but the Ordinary of the offender is also required to intervene, especially if there is no certainty as to where the delict was committed.

Since this is a very broad penal case, which admits very different degrees and methods of delict, it will be the Authority himself, which, as has been said, is in any case obliged to punish, to determine what the punishment should consist of, according to the circumstances of the case (cf. n. 66).

93. *Profanation of sacred things* (can. 1369)

The profanation of sacred things is the last of the delicts considered by the Code in the title of delicts against the faith and the unity of the Church. Following what is indicated in can. 1171, sacred things

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92. Can. 1368 - A person is to be punished with a just penalty who, at a public event or assembly, or in a published writing, or by otherwise using the means of social communication, utters blasphemy, or gravely harms public morals, or rails at or excites hatred of or contempt for religion or the Church.

93. Can. 1369 - A person who profanes a sacred object, moveable or immovable, is to be punished with a just penalty.

are those destined for divine worship by means of a specific dedication or blessing established by the liturgical rites of the Church. Therefore, they can be movable things (chalice, monstrance) or immovable (church, altar).

The profanation of sacred things occurs when they are used for irreverent or in any case profane uses, even if they are legitimately in the possession of private individuals. Sacred places, on the other hand, are profaned when gravely outrageous actions are committed in them with scandal in the judgment of the local Ordinary, who will have to evaluate them each time (can. 1211).

The profanation of sacred things must necessarily be punished by the competent Ordinary (cf. n. 58). The penalty imposed, however, will have to be assessed according to the circumstances of the concrete case, due to the wide variety of forms in which this delict can be committed.

II. Delicts against ecclesiastical Authorities and the exercise of offices

94. *Delicts against the ecclesiastical Authority and the exercise of offices* (Title II)

The second title of this second part of the Book on penal sanctions now includes both delicts committed against persons vested with authority in the Church (Pope, Bishops, etc.), and delicts committed in relation to or on the occasion of the exercise of ecclesiastical offices or ministries. The denomination of this title does not include, as was done before, the specific reference to the "freedom of the Church". In fact, the violation of this freedom forms part of some of the delicts against the ecclesiastical authorities, and it is from this perspective that they have now been considered. The change in the denomination

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94. Title II of the second part of Book VI deals with "Offences against church authorities and the exercise of duties" (*De delictis contra ecclesiasticam auctoritatem et munerum exercitium*), and includes cann 1370-1378, some of which have been expounded elsewhere. In the 1983 discipline, the section was entitled "Offences against the ecclesiastical authorities and freedom of the Church".

of the title, which has the purpose of better identifying what are the interests of the ecclesial society that one intends to protect by typifying these delicts, has made it necessary to move some canons from one title to another, in some cases without modifying the texts.

95. *Attack on the Roman Pontiff* (can. 1370 §1)

Can 1370 §1 typifies the delict of physical violence against the Roman Pontiff. Therefore, in order for the delict to be committed, there must be a personal assault and that it is a physical attack and not just a verbal one, again regardless of the actual consequences of such an act.

The sanction foreseen for this delict is a *latae sententiae* excommunication (cf. n. 35), the remission of which is reserved to the Holy See (cf. n. 73).

If the delicts is committed by a cleric, this becomes a specific aggravating circumstance and the judge can optionally add, according to the gravity of the completed facts, other penalties, censures or expiatory penalties, not excluding dismissal from the clerical state (cf. can. 1370 §1).

96. *Attack against a Bishop* (can. 1370 §2)

Alongside this delict, §2 of can. 1370 typifies the delict of physical violence against a Bishop. For the configuration of the delict, it is indifferent whether it is the Bishop of one's own diocese or not. Instead, it is a necessary requirement that the delict be committed in the

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95. Can. 1370 - §1. A person who uses physical force against the Roman Pontiff incurs a *latae sententiae* excommunication reserved to the Apostolic See; if the offender is a cleric, another penalty, not excluding dismissal from the clerical state, may be added according to the gravity of the delict.

§2. One who does this against a Bishop incurs a *latae sententiae* interdict and, if a cleric, he incurs also a *latae sententiae* suspension.

§3. A person who uses physical force against a cleric or religious or another of Christ's faithful out of contempt for the faith, or the Church, or ecclesiastical authority or the ministry, is to be punished with a just penalty.

96. Cf. *Ibid.*

awareness of attacking a Bishop in communion with the Roman Pontiff. In fact, the delict has its *raison d'être* in the authority that these subjects represent in the Church.

The penalty established in this case is not excommunication, but the *latae sententiae* censure of interdict (cf. n. 38), however not reserved to the Holy See. Instead, if the perpetrator is a cleric, in addition to the interdict, the perpetrator also incurs the penalty of suspension (cf. nn. 39-40). In fact, even if the suspension can now be applied to delicts committed by certain laymen, in this case it is addressed only to clerics.

97. *Attack against another faithful* (can. 1370 §3)

Finally, can 1370 §3 also considers the delict of physical violence against any other faithful - cleric, religious or lay person -, provided that the reason is, as a necessary requisite, a contempt for the faith, the Church, ecclesiastical power or of the ministry that the victim exercises or symbolizes. In this regard, the novelty of the norm is that it has broadened this type of delict, thus being referable not only to clerics and religious.

The penalty foreseen for delicts of this kind, unlike similar conduct against the Pope or the Bishops, is *ferendae sententiae*, and not *latae sententiae*. However, can. 1370 §3 asks the Authority to compulsorily prosecute the delict and to punish it with a just penalty that he himself will have to evaluate taking into account all the circumstances.

98. *Disobedience to the ecclesiastical Authority* (can. 1371 §1)

The delict of disobedience to ecclesiastical Authority is dealt with in can. 1371 §1, and includes disobedience to the Holy See, to one's

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97. Cf. *Ibid.*

98. Can. 1371 - §1. A person who does not obey the lawful command or prohibition of the Apostolic See or the Ordinary or Superior and, after being warned, persists in disobedience, is to be punished, according to the gravity of the case, with a censure or deprivation of office or with other penalties mentioned in can. 1336, §§2-4.

§2. A person who violates obligations imposed by a penalty is to be punished with the penalties mentioned in can. 1336 §§2-4.

Bishop or Ordinary (can. 134) and, to one's Superior. The delict of disobedience can be committed by any faithful – lay, consecrated or cleric, including Bishops – with respect to the indications that each of them is required to follow on the basis of their respective hierarchical dependence (a lay faithful, for example, is not bound to follow the indications of the Bishops of other dioceses; just as he is not bound to follow the indications of his own Bishop in the same matters in which a cleric who is incardinated in that diocese is bound to obey). Furthermore, for there to be a duty to obey, the command must be legitimate and duly manifested to the interested party, because otherwise it will not constitute a delict.

In order to be punished, the delict of disobedience requires a prior admonition or formal warning given to the subject so that he does to what has been requested of him. Then it is necessary to leave a prudential time in order to be able to evaluate whether he has changed the behaviour. It will be necessary to punish only when the persistence of the will not to carry out the order is proven.

Since this is a delict that can take on very different forms and assume various degrees of gravity, the penal sanction to be imposed will depend on the overall circumstances. Therefore, while on the one hand it indicates that such behaviours are to be compulsorily punished, can. 1371 §1 leaves to the judge the possibility of choosing the type of penalty most appropriate to the case: a censure (cf. nn. 34 ff.), or an expiatory penalty (cf. nn. 42 ff.) the deprivation from office (cf. n. 47; can. 196), or even a combination of these, always bearing in

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§3. A person who, in asserting or promising something before an ecclesiastical authority, commits perjury, is to be punished with a just penalty.

§4. A person who violates the obligation of observing the pontifical secret is to be punished with the penalties mentioned in can. 1336 §§2-4.

§5. A person who fails to observe the duty to execute an executive sentence is to be punished with a just penalty, not excluding a censure.

§6. A person who neglects to report a delict, when required to do so by a canonical law, is to be punished according to the provision of can. 1336 §§2-4, with the addition of other penalties according to the gravity of the delict.

mind that the injunction of penalties of a perpetual nature can only take place through the courts (can. 1342 §2).

99. *Violation or non-compliance of the sentence imposed* (can. 1371 §2)

The violation of the penal sanction imposed on a subject by a sentence or by a penal decree constitutes the delict of violation of conviction punished by can. 1371 §2. Naturally, for the delict to be committed it is necessary, on the one hand, for the sentence to be neither suspended nor remitted (see nn. 69-71) and, on the other hand, for the subject to have a positive intention to evade conviction, which is the constitutive element of the delict.

It should also be noted that this delict configured by §2 is different from that indicated later in §5 of this same canon (cf. n. 102). Here the delict concerns the offender who does not comply with the imposed penalty, while §5 punishes not the offender, but whoever, having the task of following up on the sentence - whoever must execute the sentence or is charged with doing so - does not respect the injunction made.

The penal sanction which must be inflicted in obligatory form by the Authority is an expiatory penalty *ferendae sententiae* chosen by the one who will have to judge among those indicated in can. 1336 §§ 2-4 (cf. nn. 43-44).

100. *Perjury before the ecclesiastical Authority* (can. 1371 §3)

The delict of perjury is committed when, before the ecclesiastical Authority or the canonical judge, something false is affirmed or promised (can. 1371 §3). In the 1983 discipline this delict was considered as a violation of Religion and of the Unity of the Church, while now it is considered a delict against the ecclesiastical Authority.

A requirement for the configuration of the delict is the will of the subject to deceive, being aware that he is not telling the truth. Fur-

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99. Cf. *Ibid.*

100. Cf. *Ibid.*

thermore, in order for the deceptive behaviour to represent a canonical delict (and not just a moral offence) it must be carried out in an adequate formal context, that is, when the subject is formally required to manifest the truth in the matters of his knowledge towards whoever has a legitimate right to know this truth.

Here too, the diversity of contexts in which such a delict can occur, which can also have a very different degree of gravity, is relevant. Consequently, even if it is a matter of a delict that must be compulsorily punished, can. 1371 §3 leaves it up to those who have to judge to evaluate the extent of the delict and to punish it in a just and proportionate way (cf. n. 66).

101. *Violation of the pontifical secret* (can. 1371 §4)

In the new penal discipline, the violation of the pontifical secret was defined as a specific delict. This secrecy, defined in accordance with the Instruction *Secreta continere*, of 4 February 1974 and subsequent amendments and additions, was not integrated into the Code and was punished by following the methods established by the aforementioned Instruction which, mainly, took into account any violations committed by employees of the Holy See. Now, however, the delict is present in the Code and concerns not only those who are subject to secrecy by reason of their office or function, but also "all those who, in a culpable manner, have had knowledge of documents and affairs covered by pontifical secrecy, or that, despite having received this information through no fault of their own, they know with certainty that they are still covered by the pontifical secret" (Instr. *Secreta continere*, cit. art. II. 4°).

In addition to the disciplinary sanctions provided for by the aforementioned Instruction, can. 1371 §4 provides that the violation of the pontifical secret, by the one who is obliged to do so, and in the matters in which it is in force, is obligatorily punished by the Authority with an adequate expiatory penalty (cf. nn. 45-47) to the circumstances.

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101. Cf. *Ibid.*

102. *Omission of the obligation to execute a sanction* (can. 1371 §5)

§5 of can. 1371 constitutes a new delict which, as already mentioned (cf. n. 99), is different from the delict of violation of a conviction. This new offence concerns individuals - sometimes vested with Authority - who, having in the Church the task of executing a penal sentence issued by an ecclesiastical court (or even an executive penal decree issued by an Ordinary), fail to fulfil this duty (see canon 1650 §1, 1653 *CIC*).

The delict, therefore, does not concern the action of the condemned subject who does not obey the injunctions of the sentence, an action which is determined by can. 1371§2, but the behaviour of those who must enforce a sentence - towards a third party, for example, or in relation to the activities of the office or entity of the obliged subject - lacks this commitment of communion and unity with the Authority ecclesiastical.

Also, in this case the penalty to be imposed is obligatory and, as in other cases, the judging Authority must choose the most appropriate penalty for the circumstances of the case, being able to opt either for an expiatory penalty (cf. n. 43), or for a censure depending on the change in the attitude of the offender (cf. nn. 33 ff.).

103. *Omission of the duty to communicate news of a delict* (can. 1371 §6)

A further new delict is that which is typified by §6 of can. 1371 regarding the duty to communicate to the competent ecclesiastical Authority any news of a delict that has become known in the external forum. Obviously, news received in the context of the sacrament of confession and in the internal forum in general are excluded.

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102. Cf. *Ibid.*

103. Cf. *Ibid.* See also *Apostolic Penitentiary*, Note on the importance of the internal forum and the inviolability of the sacramental seal of 29 June 2019, *AAS* 111 (2019), 1113-1121.

As one will recall, the motu proprio *Vos Estis Lux Mundi*, of 7 May 2019, established the duty of clerics and consecrated persons to communicate verisimilar news of delicts against the sixth commandment committed by other clerics or consecrated persons to the competent ecclesiastical Authority, as well as the behaviour of complicit silence or concealment of such delicts by the Bishops or Supreme moderators of Institutes in the various ecclesiastical extrajudicial processes in which they must participate. The delict is outlined in a general way in order to be able to understand not only the matters specifically considered by *Vos Estis Lux Mundi* (sexual abuse or silence in this regard in administrative practices), but also any other obligations to report that the norms of the Church may impose. Obviously, the condition for committing the delict is that the subject is obliged by the canonical order to notify said information, which, in the case of *Vos Estis Lux Mundi*, specifically concerns clergy and consecrated persons.

Consequently, the delict can have different forms of gravity. In any case the ecclesiastical authority is necessarily bound to initiate a sanctioning provision in these cases, having to punish the offender with an expiatory penalty among those indicated in can. 1336 §§ 2-4 (cf. nn. 45-47), to which other penalties can be added according to the gravity of the delict.

104. *Delicts against the free exercise of the ministry or of Authority* (can. 1372, 1°)

The new can. 1372, on the other hand, did not intend to configure new canonical delicts, but rather to better specify the set of delicts which, in the 1983 Code, were very briefly condensed in can. 1375. It intends to better define and differentiate separately the various types of delicts which, in various ways, aim to hinder the normal exercise of ecclesiastical government activity. There are at least four distinct types

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104. Can. 1372 - The following are to be punished according to the provision of can. 1336 §§2-4: 1° those who hinder the freedom of the ministry or the exercise of ecclesiastical power, or the lawful use of sacred things or ecclesiastical goods, or who intimidate one who has exercised ecclesiastical power or ministry; 2° those who hinder the freedom of an election or intimidate an elector or one who is elected.

of delicts indicated in can. 1372: 1° first, to impede the free exercise of ecclesiastical power or ministry; 2° second, to terrorize those who have exercised an ecclesiastical ministry or power; 3° third, to prevent the legitimate use of sacred things or other ecclesiastical goods; 4° fourth, in concrete reference to elective ecclesial meetings, hindering or impeding elective processes. The following nn. 105 and 106 deal separately with the last two types of delicts.

The first two cases seek to protect the freedom of Church ministers in the exercise of both the ecclesiastical power with which they must govern, and the pastoral ministry entrusted to them. The first offence is configured by behaviour tending to impede the freedom to exercise it, through violence, coercion, or blackmail, which can sometimes also consist of threats to bring claims in a pretentious and unjust manner against the civil Authority of the country against that of the Church. The second type of delict is, however, outlined with conduct subsequent to the exercise of power or ministry tending to induce illegitimate fears in the ministers of the Church.

The penal treatment of both delicts is the same as that of the other delicts considered in the following two nn. 105 and 106. In any case, these are delicts which must necessarily be prosecuted by the competent ecclesiastical Authority, and, in any case, the sanction must be an expiatory penalty given *ferendae sententiae* by this Authority (cf. nn. 44- 45).

105. *Delicts against the legitimate use of sacred things or ecclesiastical goods* (can. 1372, 1°)

Parallel to the previous ones, can. 1372, 1° typifies the delict of impeding, in any way whatsoever, the legitimate use of sacred things (cf. can. 1171) and ecclesiastical goods (cf. can. 1257 §1).

Can. 1171 means by sacred things those "which are designated for divine worship by dedication or blessing" which, consequently, must be treated with reverence and not used for profane and improper uses. On the other hand, they are to be considered ecclesiastical

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105. Cf. *Ibid.*

goods, in accordance with can. 1257 §1, "All temporal goods which belong to the universal Church, the Apostolic See, or other public juridic persons in the Church.".

Referring, therefore, to both types of material goods, can. 1372, 1° declares a canonical offence any conduct tending to prevent, in any way contrary to justice, its legitimate use by the Church.

Also, this type of delict, like the previous ones, must necessarily be punished by the Authority, in the manner indicated in nn. 45-47.

106. *Delicts against the free development of canonical elections* (can. 1372, 2°)

The new penal discipline has sought to treat separately from the previous offences, those that specifically concern freedom in the exercise of canonical elections (cf. can. 164 ff.). The norm seeks to protect full freedom in the electoral process on the part of all members, bearing in mind that, as can. 170 states, "an election whose freedom has in some way been effectively impeded is invalid for the same right".

Consequently, there are two behaviours considered criminal by the canon: 1° to impede, as such, the freedom of election, and 2° to terrorize the elector or the elected. The first offence concerns overall freedom in the electoral process, or a relevant part of it; the second consists, however, in intimidating one of the electors or the elected himself. The delict can be committed even if the nullity of the elective process is not subsequently formalized on the basis of can. 170. However, the delict concerns any type of entity (institutional, religious, associative, foundational, etc.) which proceeds to a canonical election within the canonical order.

Also in this delict, the Authority is obliged to initiate the disciplinary process and to impose an expiatory penalty among those indicated in can.1336 §§2-4 (cf. n. 104).

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106 Cf. *Ibid*.

107. *Incitement to aversion or disobedience* (can. 1373)

Can. 1373, following the traditional discipline of the Church, configures two delicts against the unity of the Church and against the due observance of the resolutions of the ecclesiastical Authority to which all the faithful are bound (can. 212). The first offence concerns publicly displaying rivalry against the Holy See or against the Ordinary due to an official act of ecclesiastical ministry, or ultimately, due to a provision legitimately adopted. The second consists, more generally, in inculcating attitudes of disobedience towards them in the Christian community. Therefore, these two delicts have in common the fact that they refer to behaviours tending to provoke resistance or hostile attitudes in others towards the legitimate ecclesiastical Authority that presides over the community.

In both cases, the law establishes that a punitive procedure must be followed against the perpetrator of these behaviours, and that he is punished with the censure of disqualification (cf. n. 38) or with other penalties deemed appropriate by the Authority. In both cases, but above all in the second, the degree of publicity of the incitement will be helpful in determining the intensity of the sanction to be imposed, which can be another censure or an expiatory penalty (cf. n. 42).

108. *Adherence to anti-Catholic associations* (can. 1374)

The participation of the faithful in associations or groups that conspire against the Church is clearly incompatible with the baptismal duty of ecclesial communion (cf. can. 209). Contrary to the choice followed in the 1917 Code, the penal law of 1983 did not want to make explicit mention of concrete groups belonging to this category.

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107. Can. 1373 - A person who publicly incites hatred or animosity against the Apostolic See or the Ordinary because of some act of ecclesiastical office or duty, or who provokes disobedience against them, is to be punished by interdict or other just penalties.

108. Can. 1374 - A person who joins an association which plots against the Church is to be punished with a just penalty; however, a person who promotes or directs an association of this kind is to be punished with an interdict.

The same criterion is followed in the current penal law, referring for further specifications to the declarations of the competent Authorities or of the Dicastery for the Doctrine of the Faith.

In this context, can. 1374 outlined two generic behaviours as criminal: 1° to join an association that conspires against the Church, and 2° to occupy managerial or promotional positions in such associations. Despite the similarity of the delict, the two cases involve a different gravity, which also translates into the different type of penal sanction to be applied.

In both cases, can. 1374 imposes on the Authority the duty to start the sanctioning process. However, while in the case of membership alone the penalty is indeterminate and must be chosen by the person who is called to judge, in the case of managers or promoters the canon specifically determines the penalty to be imposed, which must be the censure of interdict (cf. n. 38).

109. *Usurpation or illegitimate retention of an ecclesiastical office* (can. 1375)

After having examined in nn. 95-108 (corresponding to cans. 1370-1374) the delicts against the Authority of the Church, the subsequent topics of this section specifically concern the delicts that can be committed in the exercise of one's offices. First are considered two delicts typified by can. 1375: 1° the delict which consists in usurping an ecclesiastical office, that is, unjustly occupying that office (can. 1375 §1), and 2° the delict of illegitimately maintaining the office, refusing to abandon when one is supposed to do so. The illegitimate retention of office is, in fact, equivalent in law to usurpation (can. 1375 §2).

For the prosecution of both delicts, it is necessary to start by admonishing the subject who illegitimately occupies the office, formally

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109. Can. 1375 - §1. Anyone who usurps an ecclesiastical office is to be punished with a just penalty.

§2. The unlawful retention of an office after being deprived of it, or ceasing from it, is equivalent to usurpation.

ordering him to leave the office and to hand it over to the competent Authority.

In both cases, the initiation of the sanctioning process by the Authority is mandatory, and the penal sanctions are left to the assessment of whoever is called to judge judge, proportionally to the extent of the delict itself (cf. n. 66). However, if the cessation of the office had occurred following a canonical sanction of privation of the office itself (can. 196), the delict foreseen in can. 1371 §2 (cf. n. 99).

110. *Theft, embezzlement, and illicit alienation of ecclesiastical goods* (can. 1376 §1)

With regard to offences against ecclesiastical property which can be committed during the exercise of one's office or ministry, can. 1376 §1 has sought to specify more clearly what was already provided generically in can. 1377 promulgated in 1983. These are, therefore, offences of economic importance, aimed at defending the patrimony of the Church, unlike those considered in can. 1377, which are more specifically concerned with the proper exercise of the ministry itself (cf. nn. 112-113), and the delicts dealt with in can. 1393 (cf. n. 146-147), which are mainly aimed at protecting the status and lifestyle of clergy and religious.

Can. 1376 considers two culpable offences in §2 (cf. n. 111), whereas the present §1 provides for three different offences committed necessarily with malicious intent:

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110. Can. 1376 - §1. The following are to be punished with the penalties mentioned in can. 1336 §§2-4, without prejudice to the obligation of repairing the harm: 1° a person who steals ecclesiastical goods or prevents their proceeds from being received; 2° a person who without the prescribed consultation, consent, or permission, or without another requirement imposed by law for validity or for lawfulness, alienates ecclesiastical goods or carries out an act of administration over them.

§2. The following are to be punished, not excluding by deprivation of office, without prejudice to the obligation of repairing the harm: 1° a person who through grave personal culpability commits the delict mentioned in §1, n. 2; 2° a person who is found to have been otherwise gravely negligent in administering ecclesiastical goods.

1° *Embezzlement, theft or misappropriation of ecclesiastical property*. A specific form of this offence is embezzlement, when the perpetrator is actually the officeholder who was in charge of the management of the property. This circumstance, however, does not constitute a different offence, but an aggravating circumstance of the same offence (see nos. 27-28);

2° Behaviour aimed at *preventing the receipt* of the fruits, of whatever kind, of ecclesiastical property by those who have a legitimate right to collect them;

3° Alienation of ecclesiastical property or carrying out of acts of patrimonial administration in it *without the consultations, consents or licences* prescribed by law (cf. cans. 1291 ff.). Such behaviours constitute a delict *even where canon law does not require such consultations for* the canonical validity of the alienation or act of administration: failure to comply with the requirements of the law in such cases is sufficient for the delict to be committed. However, the requisite is that this conduct must have been carried out wilfully. if it is carried out only through (serious) negligence, the delict involved here is that indicated in §2 of the same can. 1376 (cf. n. 111).

While the first of the three offences take place with an unjust enrichment of the person, the other two possess, with respect to that one, proper autonomy, and there a criminal act even if there is no embezzlement. On the contrary, in the third of the delicts indicated concerning the omission of due consultation, consent or licence, the delict is committed even if no pecuniary damage ensues, since the right/duty of other instances to intervene in the decision has been infringed. In fact, this conduct – which omits due diligence – unjustly endangers the patrimonial property, and it is also for this reason that a penalty is provided for those who do not carry out due diligence.

These offences must be compulsorily examined by the Authority, which in each case is obliged to initiate the sanctioning procedure. In such cases, an expiatory penalty must be imposed (cf. n. 43). Such a penalty depends on the gravity of the case and the circumstances involved. In all cases, a duty of restitution and reparation for the damage

caused must be imposed on the offender. As in other cases, the effective reparation must be evaluated in order to grant remission of the sentence, in accordance with Can. 1361 §4 (cf. n. 80).

However, it is necessary to prevent the offender from profiting from his bad behaviour: for this reason, if the circumstances do not allow full reparation, it will be necessary to determine how this requirement can be fulfilled, at least in a symbolic way or in an indirect way through works of charity, etc.

111. *Grave negligence in the administration of ecclesiastical property* (can. 1376 §2)

Grave negligence in the administration of ecclesiastical property by those who are responsible for it is a new offence, which was not in the penal law of the 1983 Code. Even if grave negligence normally entails concrete damage to the Church's assets, this damage is not in itself a necessary requirement for the two offences set out in can. 1376 §2. An attitude of grave negligence that places ecclesiastical assets at risk could be punished, even in the absence of a perceivable damage.

Two types of culpable offences fall within the framework mentioned Can. 1376 §2: 1. carrying out acts of extraordinary administration of ecclesiastical property by omitting due consultation through ignorance or negligence, and 2. negligence in the administration of ecclesiastical property which is recognised as "serious" by the Authority.

In these cases, the law allows the one who is called to judge to determine the right penalty. Such a penalty must be expiatory in nature (n. 42), and the one who is called to judge must also oblige the offender to make reparation for the damage caused. Moreover, he must determine if such a reparation is appropriate in cases where canonical penalty must be remitted (cf. n. 80).

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111 Cf. *Ibid*.

112. *Bribery of one who exercises an office or a ministry* (can. 1377 §1)

Canon 1377 §1 provides for the delict of active and passive bribery, of anyone who gives or promises something in order to obtain from someone exercising an ecclesiastical office an illegal action or omission (active bribery), or of anyone who, occupying an ecclesiastical office, accepts something from someone from whom an action or omission contrary to the law is required of him (passive bribery). If the actions concern the celebration of sacraments, the delict of simony may be committed, according to Canon 1380 (cf. n. 123).

The delict of active bribery is perfected by the mere offer or promise of money, regardless of the cooperation of the ecclesiastical officer. The delict also requires that the requested action or omission be contrary to the law, since it is not a punishable offence if the requested conduct is lawful. However, this case is also contrary to decorum, and the Authority will have to initiate a disciplinary correction, for those who accept gifts or promises for due acts of ministry, beyond what is provided for by law as normal fees, or from sober manifestations of gratitude.

The delict of bribery must be compulsorily punished by the Authority. Circumstances can vary. For that reason, the law entrusts the judge with the task of determining the penalty. In the case of active corruption, can. 1377 §1 provides for the imposition of an expiatory penalty among those indicated in can. 1336 §§ 2-4 (cf. n. 42). In the

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112. Can. 1377 - §1. A person who gives or promises something so that someone who exercises an office or function in the Church would unlawfully act or fail to act is to be punished according to the provision of can. 1336 §§2-4; likewise, the person who accepts such gifts or promises is to be punished according to the gravity of the delict, not excluding by deprivation of office, without prejudice to the obligation of repairing the harm.

§2. A person who in the exercise of an office or function requests an offering beyond that which has been established, or additional sums, or something for his or her own benefit, is to be punished with an appropriate monetary fine or with other penalties, not excluding deprivation of office, without prejudice to the obligation of repairing the harm.

case of passive corruption, the Authority will have to identify the most suitable penalty (a censure or an expiatory penalty), without excluding the penal deprivation of office (can. 196). In any case it will be necessary to eventually impose the obligation to compensate or repair the damages caused, the fulfillment of this obligation being a requirement for the remission of the penalty as indicated in can. 1361 §4 (cf. n. 80).

113. *Bribery in acts of office* (can. 1377 §2)

Different from the delicts described in §1 of can. 1377 (cf. n. 112) is the delict described in §2 of the same canon with regard to the delict of bribery in the strict sense, committed by a person who, in order to perform acts proper to his office or ecclesiastical ministry, demands offers greater than those established by law, as well as additional sums of money or other sums of various kinds, for his own benefit. This offence was not clearly defined in the 1983 discipline and is based on that which is established in can. 2408 of the 1917 *Codex*. In committing this type of delict there is also an abuse of one's position of authority or office to impose an illegitimate contribution on one who legitimately requests a service. The illegitimate nature of the request is, therefore, a necessary requirement of the delict.

As in the previous case (see n. 112), the delict of corruption can take on very different forms and assume distinct degrees of gravity. Therefore, although it is a delict that must be punished compulsorily, the law also leaves to the judge the task of determining the penalty (cf. n. 66). Can. 1377 §2 suggests the opportunity to impose an adequate pecuniary fine in these cases (cf. n. 45), but other penal sanctions could also be imposed, not excluding penal deprivation of office (can. 196). In this case, it is necessary to repair the damage caused by the action or omission, following can. 128. For the remission of the penalty, therefore, it will be necessary to verify whether this duty of reparation has been observed effectively, in conformity with can. 1361 §4 (cf. n. 80).

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113 Cf. *ibid*.

One must keep in mind, however, that there are gestures and expressions of gratitude which, if moderated and contained according to local customs, can be legitimate and do not constitute a delict. Generally, public administrations establish parameters to measure admissible gifts or gifts within reasonable limits, the total prohibition of which could even damage legitimate social relations. In the same way, and taking into account the austerity required of clerics, it may be legitimate to accept certain gifts that are moderate and compliant with the law, if they cannot potentially cause scandal.

114. *Abuse of power or office* (can. 1378 §1)

The last canon of the section concerning delicts committed in the exercise of one's ecclesiastical office or ministry considers two delicts which do not in themselves have a material or economic component: the abuse of power (can. 1378 §1), and culpable negligence in the exercise of one's duty (can. 1378 §2).

The delict of abuse of power or office defined by can. 1378 §1 includes in a general form any arbitrariness or excess committed by the holder of some managerial power, of an office or of a ministry, either by actions or by equally voluntary omissions. The law considers the so-called "abuse of power" as an autonomous delict, punishable in itself. It is different from other specific types of delicts which necessarily include as a constituent element some sorts of abuse of power or authority, such as the case of those considered, for example, in nn. 113, 136, 151.

The Authority must compulsorily initiate the sanctioning procedure for this delict and the law leaves it up to whoever is called to

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114. Can. 1378 - §1. A person who, apart from the cases already foreseen by the law, abuses ecclesiastical power, office, or function, is to be punished according to the gravity of the act or the omission, not excluding by deprivation of the power or office, without prejudice to the obligation of repairing the harm.

§2. A person who, through culpable negligence, unlawfully and with harm to another or scandal, performs or omits an act of ecclesiastical power or office or function, is to be punished according to the provision of can. 1336 §§2-4, without prejudice to the obligation of repairing the harm.

judge the freedom to establish the penalty to be imposed according to the gravity of the delict, unless in particular cases this penalty is not determined by a concrete law or by a penal precept. For this delict, it is also possible to impose penal deprivation of office (can. 196). Furthermore, it is always necessary to include in the sanction of the delict the obligation to repair any damage caused by the act of abuse of office.

In this regard, it should be remembered that can. 1465 of the Code of Canons of the Eastern Churches also punishes those who, making use of the authority of their office, force someone to change their rite. Such a specification is missing in Latin canon law, but it must in any case be considered directly applicable and, in any case, included in the more general classification contained in can. 1378 §1.

115. *Culpable negligence in acts of authority or office* (can. 1378 §2)

In the penal system of the Church, as can. 1321 §2 indicates, acts committed solely out of fault (and not out of malice) are punishable only if there has been grave fault (cf. n. 18). In this context, §2 of can. 1378 configures, however, as constituting a delict, the illegitimate acts or omissions made through negligence and with damage or scandal to others, by the holder of a power, assignment, or ministry.

The following are therefore prerequisites for this offence: a) the illegitimate act or omission, b) the negligence of the holder of an ecclesiastical power, office or ministry, c) causing damage or scandal to persons.

The delict of culpable negligence must be dutifully prosecuted by Authority, and the law entrusts to whoever must punish the faculty of choosing the most just expiatory penalty among those indicated in can. 1336 §§ 2-4 (cf. n. 42). Furthermore, it is always necessary to add the obligation to repair any damage caused (cf. n. 80).

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115 Cf. *Ibid.*

III. Delicts against the Sacraments

116. *Delicts against the Sacraments* (Title III)

The third section of this second part of Book VI brings together the delicts committed during the celebration of the Sacraments, some of which were previously found in other sections of the Book. In fact, some changes of canons have been made with respect to the order of the norms promulgated in 1983, even if the modifications in the moved texts are of little importance: what is now modified are the penalties foreseen for the delicts. However, some new delicts have been defined, some of which are already present in the 1917 codification.

117. *Attempt to celebrate the Eucharist* (can. 1379 §1, 1°)

Can. 1379 §1, 1° first defines as a delict the attempted celebration of the Eucharist by someone who does not belong to the priestly order. To have this delict committed, therefore, a simulating act of the Eucharistic celebration by a person who is not a priest is required. If,

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116. Title III of this Part Two of Book VI deals with "Offences against the sacraments" (*De delictis contra sacramenta*), and is supplemented by cans. 1379-1389, some of which have also been moved from other sections. In the 1983 discipline, the section was entitled "*Usurpation of ecclesiastical offices and delicts in their exercise*".

117. Can. 1379 - §1. The following incur a *latae* sententiae interdict or, if a cleric, also a *latae* sententiae suspension: 1° a person who, not being an ordained priest, attempts the liturgical celebration of the Eucharistic Sacrifice; 2° a person who, apart from the case mentioned in can. 1384, though unable to give valid sacramental absolution, attempts to do so, or hears a sacramental confession.

§2. In the cases mentioned in §1, other penalties, not excluding excommunication, can be added, according to the gravity of the delict.

§3. Both a person who attempts to confer a sacred order on a woman, and the woman who attempts to receive the sacred order, incur a *latae* sententiae excommunication reserved to the Apostolic See; a cleric, moreover, may be punished by dismissal from the clerical state.

§4. A person who deliberately administers a sacrament to those who are prohibited from receiving it is to be punished with suspension, to which other penalties mentioned in can. 1336 §§2-4 may be added.

§5. A person who, apart from the cases mentioned in §§1-4 and in can. 1384, pretends to administer a sacrament is to be punished with a just penalty.

on the other hand, it concerns a subject who has been ordained a priest but, for whatever reason, is prevented or prohibited from exercising a sacred order, one will have to consider the delict defined by can. 1389 (cf. n. 136), instead of the one presently considered.

This delict is reserved (cf. n. 72) specifically to the Dicastery for the Doctrine of the Faith as specified in art. 3 §1, 2° NSST. Consequently, when dealing with it, the Ordinary must notify the Dicastery and then follow the instructions received.

The delict is punished with a *latae sententiae* censure of interdict (cf. n. 38), in the case of a lay faithful, or suspension (cf. n. 39), in the case of a deacon. Depending on the gravity of the delict, however, whoever is called to judge it can also add other expiatory penalties, and the censure of excommunication (can. 1379 §2).

118. *Attempted sacramental absolution* (can. 1379 §1, 2°)

The delict of attempted sacramental absolution is committed by the person who, regardless of whether or not he has received priestly ordination, knows that he cannot validly administer sacramental absolution and, nevertheless, attempts to give it. As it is defined, the delict can be committed not only by a lay person and a deacon, but also by one who, having received priestly ordination, knows, however, that he is not in a position to validly give sacramental absolution, because, for example, he lacks the necessary faculties or for some other reason. It is therefore necessary for there to be an attempt to give absolution, and not merely to listen to the manifestations of the penitent, as in this case the delict outlined in n. 119 would be committed. Naturally, exceptions must be made for cases of the risk of death (can. 976), and those circumstances in which it is legitimate to have recourse to the substitution envisaged in can. 144.

On the other hand, the attempted association of one who is complicit in sin against the sixth commandment (cf. can. 977) does not fall within this type, but rather within that typified in canon 1384, nor

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118. Cf. *Ibid.*

does the deliberate administration of the sacrament to one who is forbidden to receive it, a case contemplated in §4 of this canon as a different offence (cf. n. 121).

This offence is also reserved to the Dicastery for the Doctrine of the Faith by art. 4 §1, 2° NSST and, consequently, the Ordinary must refer to the Dicastery and follow the instructions received.

As in the previous case, the established penalty is the *latae sententiae* censure of interdict (cf. n. 38), in the case of a lay faithful, or suspension (cf. n. 39), in the case of a cleric. Furthermore, according to the gravity of the delict, whoever judges it can add other penalties, both expiatory and the censure of excommunication (can. 1379 §2).

119. *Fraudulent listening of sacramental confession* (can. 1379 §1, 2°)

Linked to the previous one, can. 1379 §1, 2° typifies the fraudulent hearing of sacramental confession as a delict. This is a broader delict, distinguished from the previous one by the fact that there is no simulation of sacramental absolution, but only fraudulent listening. It is not necessary for the fraudulent listener to do so by pretending to be a legitimate confessor: the fraudulent intentionality of hearing the content of the confession is sufficient. This offence is not reserved to the Dicastery for the Doctrine of the Faith.

The established penalty, as in the previous case, is the *latae sententiae* censure of interdict (cf. n. 38), if it concerns a lay faithful, or suspension, if he is a cleric (cf. n. 39). Furthermore, depending on the gravity, the offender can be punished with other expiatory penalties as well as with the censure of excommunication (can. 1379 §2).

120. *Attempted ordination of women* (can. 1379 §3)

This delict, which was not included in 1983 Code, was incorporated in canon 1379 §3, established by Decree of the Congregation

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119. Cf. *Ibid.*

120. Cf. *Ibid.* The *Rescriptum ex Audientia SS.mi* of 11 October 2021 amended the Norms on delicts reserved to the Congregation for the Doctrine of the Faith (*L'Osservatore Romano*, 7 December 2021, p. 6).

for the Doctrine of the Faith on 30 May 2008, in *AAS* 100 (2008) 403. The attempted ordination of women was then configured as a delict committed both by the person attempting to perform ordination and by the woman who undergoes such an action, the degree of the order that is attempted (diaconate, presbyterate or episcopate) being irrelevant. A necessary condition for delineating the delict is that the external acts corresponding to the sacred rites in question are performed.

The delict was then included, as reserved, in art. 5 of the Norms of the motu proprio *Sacramentorum sanctitatis* tutela, of 21 May 2010 [*AAS* 102 (2010) 419-430]. Therefore, since it is a delict reserved to the Dicastery for the Doctrine of the Faith, the local Ordinary must inform the Dicastery and then proceed in accordance with the instructions received, even in the event that the fact was attempted by a non-cleric.

The penal sanction foreseen in this case is excommunication *latae sententiae* (cf. n. 35), both for those who simulate ordination and for the woman who is the passive subject. A cleric who attempts ordination can also be punished with the penalty of dismissal from the clerical state. The remission of censure for this delict is also reserved to the Apostolic See.

121. *Administration of sacraments to those who are forbidden to receive them* (can. 1379 §4)

Can. 1379 §4 introduced into the penal discipline a delict which, despite being found in the 1917 *Codex* (can. 2364 *CIC* 1917), had not been included in the text of the Code in 1983. It consists in the illegitimate administration of sacraments to those who are forbidden to receive them. The delict is committed by the minister who, aware of the situation (the text speaks of a "deliberate" action), and outside the cases of danger of death (can. 976), proceeds with the administration of the sacraments. However, for this delict to occur, it is also necessary that the prohibition is legally certain, so that a clear duty of the minister to observe it emerges.

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121. Cf. *Ibid.*

The canon does not specify which sacraments are involved, nor the reasons for the prohibition. In ordinary cases, it will be the administration of the Penance or the Eucharist, but the delict is the same in the case of the prohibition of marriage (when there is a prohibition or an impediment which has not been dispensed, or a judicial prohibition has been given to the subject according to can. 1682 §1 or imposed by the Ordinary), or of the sacrament of holy orders, when there are impediments or irregularities (canons 1040-1049) or simply for lack of jurisdiction (can. 1015). Moreover, prohibitions can originate in censures of excommunication or interdict, according to canons 1331 and 1332 cf. n. 34 ff.).

The punishment of the delict is mandatory, and the Authority must preventively initiate sanctioning measures. The *ferendae sententiae* penalty is determined, consisting of the censure of suspension (cf. nos. 33-34) plus, if required by the gravity of the delict committed, other expiatory penalties under can. 1336 §§ 2-4 (cf. nos. 42).

122. *Simulation in the administration of the sacraments* (can. 1379 §5)

To close the delicts specifically configured in the preceding numbers, the last paragraph of Canon 1379 configures, in a general manner, the delict of simulation in the administration of the sacraments, which includes all the remaining delicts not specified above, which contain a simulation in the celebration of the sacraments by the person assuming the role of minister.

With regard to this general category, concerning other forms of simulation in the administration of sacraments, it should be noted that what specifically concerns the simulation of the sacraments of the Eucharist and Penance is reserved to the exclusive jurisdiction of the Dicastery for the Doctrine of the Faith (see nn. 117, 118).

In the case of delicts of sacramental simulation, the local Authority is prescriptively required to apply the corresponding sanctions, and

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122. Cf. *Ibid.*

to impose the (unspecified) penalty that he deems just according to the gravity.

123. *Simony in the administration of sacraments* (can. 1380)

The delict of simony in the administration of the sacraments is committed both by the minister who "sells" a sacrament for a certain price and by the one who receives it having "bought" it. This offence is specifically concerned with the celebration of the sacraments, whereas if other ministry-related activities are involved, the delict indicated in can. 1377 §2 (cf. n. 113) could occur instead. In addition to the minister, the delict is committed by the person who receives the sacrament having paid for it: it is not committed, on the other hand, by any third person who has paid for it but has not received it (this, however, could incur concurrence of delict according to can. 1329 §1). Neither is it committed by the person who receives the sacrament but is unaware of the mentioned payment.

The acceptance of legitimate salaries or taxes legitimately established by the Authority on the occasion of the sacraments is not simony, but the request or the stipulation of sums that exceed the normally established figure could constitute a delict (cf. nn. 112-113).

The sanction for this delicts is prescriptive, and the Authority is required to initiate punitive investigations. In evaluating the penalty to be imposed, the judge can choose between the censures of interdict (cf. n. 38) or suspension (cf. n. 39), and the expiatory penalties mentioned in can. 1336 §§ 2-4 (cf. nn. 42 ff.), according to the gravity of the acts and other circumstances.

124. *Prohibition of communicatio in sacris* (can. 1381)

Can. 1381 typifies in a general manner any type of prohibited *Communicatio in sacris* that does not constitute another specific delict.

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123. Can. 1380 - A person who through simony celebrates or receives a sacrament is to be punished with an interdict or suspension or the penalties mentioned in can. 1336 §§2-4.

124. Can. 1381 - One who is culpable of prohibited participation in religious rites is to be punished with a just penalty.

Communicatio in sacris consists in the Eucharistic concelebration with ministers belonging to religious confessions not in full communion with the Catholic Church, or in the administration of the sacraments to faithful belonging to said confessions. Consequently, the category involves very varied behaviours of different degrees of gravity. The delict concerns the so-called "prohibited" *Communicatio in sacris* because, in certain circumstances, some *Communicatio in sacris* is permitted by the Church which does not involve indifferentism and serves the *salus animarum*. This *communicatio* is, therefore, lawful in the cases foreseen by can. 844, while, on the other hand, contrary initiatives are forbidden and are to be considered delicts.

One of the delicts included in this can. 1381 is the Eucharistic concelebration with ministers of ecclesial communities not in communion, an action explicitly prohibited by can. 908. This offence is reserved to the Dicastery for the Doctrine of the Faith (art. 3 §1, 4° of the NSST). Therefore, in the case of *Communicatio in sacris* on the occasion of a Eucharistic concelebration, the Ordinary is required to inform the Dicastery and to follow the instructions received. However, the remaining delicts of *Communicatio in sacris* are not reserved to this Dicastery.

On the way to punish these delicts, can. 1381 prescriptively imposes on the Authority the duty to punish every delict of *Communicatio in sacris,* even if due to the variety of expressions that the delict can assume, the penalty is indeterminate and is left to the evaluation of the judge (cf. n. 66).

125. *Desecration of consecrated species* (can. 1382 §1)

The delict of desecration of consecrated Eucharistic species is committed by throwing the species on the ground, keeping them for

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125. Can. 1382 - §1. One who throws away the consecrated species or, for a sacrilegious purpose, takes them away or keeps them, incurs a *latae* sententiae excommunication reserved to the Apostolic See; a cleric, moreover, may be punished with some other penalty, not excluding dismissal from the clerical state.

sacrilegious purposes, or carrying out "any voluntarily and gravely derogatory action". There is also a delict of desecration of consecrated Eucharistic species in the sacrilegious manipulation of the species of the sacrament, as indicated in an authentic response of the then Pontifical Council for Legislative Texts of July 3, 1999 [*AAS* 91 (1999) 918]. The delict is aggravated when it is committed by a sacred minister, i.e., the one to whom, by the sacrament of Holy Orders, the Church has conferred a specific authorization to guard and administer the sacrament. This delict is one of the delicts exclusively reserved to the Dicastery for the Doctrine of the Faith (cf. art. 3 §1, 1st NSST).

The penalty for this delict of desecration is the *latae sententiae* censure of excommunication (see n. 35), reserved to the Dicastery for the Doctrine of the Faith (see n. 72). Furthermore, if this delict is committed by a cleric, another expiatory penalty may be imposed upon him *ferendae sententiae* (cf. n. 43), not excluding dismissal from the clerical state.

126. *Eucharistic consecration for a sacrilegious purpose* (can. 1382 §2)

In connection with the delict of desecration, can. 1382 §2 now considers (the delict was not included in the 1983 Code) the different modalities of Eucharistic consecration carried out for a sacrilegious purpose, inside or outside a liturgical celebration, consecrating both or only one of the Eucharistic species, etc. Unlike desecration, this delict is typified by the action of "consecrating", and therefore it is a delict that can only be committed by priests.

The prohibition to consecrate only one of the two species, or to consecrate them outside the Mass is contained in can. 927. This conduct, however, was typified as a delict only in art. 3 §2 NSST of the motu proprio *Sacramentorum sanctitatis* tutela. This is also one of the delicts reserved to the Dicastery for the Doctrine of the Faith.

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§2. A person guilty of consecrating for a sacrilegious purpose one element only or both elements within the Eucharistic celebration or outside it is to be punished according to the gravity of the delict, not excluding by dismissal from the clerical state.

126. Cf. *Ibid*.

This delict that must necessarily be punished *ferendae sententiae*. Furthermore, since it is a delict reserved to the Dicastery for the Doctrine of the Faith, the Ordinary must inform the Dicastery and proceed according to the instructions received. Can. 1382 §2 does not provide for a specific penalty for these cases. Here it is the gravity the case that guides whoever is called to judge in choosing between censures (cf. n. 34) and expiatory penalties (cf. n. 42). The perpetual penalty of dismissal from the clerical state is not excluded.

127. *Illegitimate profit with Mass offerings* (can. 1383)

Can. 947 requires that offerings legitimately received by priests for the celebration of Masses are always kept away from any appearance of bargaining and commerce. In this regard, can. 1383 typifies as a delict, any kind of illegitimate traffic or profit obtained in any way, in relation to Mass offerings.

The delict concerns only offerings intended for Masses, which enjoy specific legal protection in the Church. Moreover, as a requisite, there must be an illegitimate profit: another kind of illicit enrichment is constitutive, instead, of the delicts considered in cans. 1377 and 1378 (cf. nn. 112-115). This delict can be committed through actions of various kinds, such as illegitimately accumulating intentions (cf. can. 948), receiving more than one offering per day (cf. can. 951), asking for offers greater than those established (cf. can. 952), accepting for oneself a number of intentions greater than the Masses that can be celebrated in one year (cf. can. 953), keeping for oneself a part of the offering due to another priest (cf. can. 955), etc.

This delict must necessarily be punished by the Ordinary and, taking into account the modalities of the delict and its gravity, whoever is called to judge in such a case will have to impose a penal sanction that is adequate and proportional to the circumstances, having to choose between a censure (cf. nn. 34 ff.) or an expiatory penalty

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127. Can. 1383 - A person who unlawfully traffics in Mass offerings is to be punished with a censure or with the penalties mentioned in can. 1336 §§2-4.

On masses with multiple intentions, see Congregation for the Clergy, General Decree *Mos iugiter* of 22 February 1991, *AAS* 83 (1991) 443-446.

among those indicated in can. 1336 §§ 2-4 (cf. nn. 45-47). Even if the law does not say so, it will eventually be necessary to consider the need for the restitution or reduction of the burden of Masses (cf. can. 1308 §1).

128. *Absolution of an accomplice in sin against the sixth commandment* (can. 1384)

Can. 977 declares invalid the absolution of the accomplice in sins against the sixth commandment, except in cases of danger of death. In this regard, and with the same exception of the danger of death, can. 1384 delineates as a crime such an act which, then, appears only as an 'attempt' since, from a sacramental point of view, it is in any case invalid.

This canonical offence requires the offender to be a priest, because if this act is performed by someone who is not ordained, it constitutes a different offence (cf. n. 122). Moreover, as it is configured by law, the delict only occurs in the case of sins against the Sixth Commandment, regardless of the gender of the penitent, and not of possible complicity in other criminal acts.

The acquittal of an accomplice in a sin against the sixth commandment is a delict which, if judged in an external forum, is reserved to the Dicastery for the Doctrine of the Faith, by virtue of art. 4 §1, 1st NSST. The delict, however, carries a *latae sententiae* penalty of excommunication (cf. n. 36). In the event of such a delict, the Ordinary must notify the Dicastery and then follow the instructions received.

129. *Solicitation in confession* (can. 1385)

Soliciting acts against the Sixth Commandment during the Sacrament of Confession is typified in Canon 1385. This is a delict that can

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128 Can. 1384 - A priest who acts against the prescription of can. 977 incurs a *latae* sententiae excommunication reserved to the Apostolic See.

129. Can. 1385 - A priest who in confession, or on the occasion or under the pretext of confession, solicits a penitent to commit a sin against the sixth commandment of the Decalogue, is to be punished, according to the gravity of the delict, with suspension, prohibitions and deprivations; in the more serious cases he is to be dismissed from the clerical state.

only be committed by a priest, in the very act of sacramental confession or outside of it. It takes place when in the context of confession, the penitent is asked to carry out sinful acts with the confessor himself or with another person. In the first case, the delict is reserved to the Dicastery for the Doctrine of the Faith (art. 4 §1, 4th NSST). For the perfection of the delict, it is irrelevant whether the priest has the faculties necessary to be able to validly absolve, just as the gender of the penitent is immaterial.

In these cases, the Authority is always obliged to initiate sanctioning measures. Furthermore, since it is a confidential delict, he will have to communicate it to the Dicastery and proceed in accordance with the instructions received. The foreseen penalty will depend on the gravity of the delict and the judge will be able to impose as a sanction both the censure of suspension (cf. nn. 39-40) and certain expiatory penalties of prohibition or deprivation (cf. nn. 46-47). The perpetual penalty of dismissal from the clerical state is not excluded in more serious cases (cf. n. 48).

130. *Violation of the sacramental "seal"* (can. 1386 §1)

Can. 983 §1 enunciates the duty of absolute confidentiality, which does not admit any exception, which the confessor has with regard to the sins reported during the sacramental confession, even in the case in which he does not then proceed to absolve the penitent. In relation to this absolute duty, can. 1386 §1 typifies the delicts of direct violation and indirect violation of the sacramental seal.

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130. Can. 1386 - §1. A confessor who directly violates the sacramental seal incurs a *latae sententiae* excommunication reserved to the Apostolic See; he who does so only indirectly is to be punished according to the gravity of the delict.

§2. Interpreters, and the others mentioned in can. 983 §2, who violate the secret are to be punished with a just penalty, not excluding excommunication.

§3. Without prejudice to the provisions of §§1 and 2, any person who by means of any technical device makes a recording of what is said by the priest or by the penitent in a sacramental confession, either real or simulated, or who divulges it through the means of social communication, is to be punished according to the gravity of the delict, not excluding, in the case of a cleric, by dismissal from the clerical state.

This delict, therefore, can only be committed by the confessor who is required to observe the sacramental seal. The violation is direct when the confessor reveals the sin and the sinner's name, while it is indirect when, from the words revealed by the confessor, the sin and the sinner could be identified. According to art. 4 §1, 5° NSST these delicts are exclusively reserved to the Dicastery for the Doctrine of the Faith.

Direct violation of the sacramental seal is punished with the *latae sententiae* censure of excommunication (cf. n. 36), reserved to the Holy See. In the event of a report or news of a delict, the Authority is obliged to initiate the sanctioning procedure, notifying the Dicastery of the fact and following its instructions. In the internal forum, on the other hand, whoever receives the confession of this sin must have recourse directly to the Apostolic Penitentiary.

The indirect violation of the sacramental seal is not punished with the *latae sententiae* censure but must equally be judged through the established procedure and punished with a sanction proportionate to the gravity of the delict established by the judge.

131. *Violation of the "secret" of confession* (can. 1386 §2)

Although different from the violation of the sacramental "seal" by the confessor (cf. n. 130), can. 983 §2 equally imposes the obligation of secrecy on the interpreter who possibly intervenes in the sacramental confession, as well as on anyone who casually has heard the manifestation of the sins of a penitent to the confessor or to whom "in any way news of the sins has reached from confession" (can. 983 §2). The violation of this duty is also constitutive of a canonical delict, sanctioned by can. 1386 §2 which is, however, not reserved to the Holy See.

For such cases, can. 1386 §2 establishes the duty of the Ordinary to initiate sanctioning measures and entrusts to whoever must judge the possibility of choosing at his discretion as a penal sanction a just

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131. Cf. *Ibid.*

penalty, which can be a censure (cf. nn. 34 ff.) or an expiatory penalty (see n. 43), not excluding excommunication (see n. 36).

132. *Registration or publication of confessions* (can. 1386 §3)

The new penal discipline incorporated into the Code the delicts of recording and disclosing the sacramental confession. This was already typified by the Congregation for the Doctrine of the Faith in the General Decree of 23 September 1988, *AAS* 80 (1988) 1367. These delicts were then included among the *graviora delicta* which belong to the exclusive competence of the aforementioned Dicastery, on the basis of art. 4 §1, 6th NSST.

These delicts consist in the "recording, made with any technical means, or the disclosure with the means of social communication carried out maliciously, of the things that are said by the confessor or by the penitent in the sacramental confession, real or simulated, mentioned in can. 1386 §3 *CIC*" (art. 4 §1, 6th NSST). It is not necessary for the delict to be committed that sins be revealed or even that the identity of the subjects be publicized: it is enough that the intimacy and sacredness of the conversation that takes place in the context of the celebration of the Sacrament is maliciously violated. The delict is still committed even if it is a simulated confession. While recording requires proximity to the offender and to the place and time of the confession, the delict of disclosure can also be committed by a person other than the perpetrator of the recording.

This is a delict that must necessarily be punished. Consequently, having received news of the delict, the Ordinary must notify the Dicastery for the Doctrine of the Faith and follow its instructions on how to proceed. Both can. 1386 §3 and art. 7 of NSST leave to whoever has to judge the determination of the just penalty to be imposed according to the gravity of the circumstances. The perpetual penalty of dismissal from the clerical state in the case of a cleric is not excluded. It is so because his identity as a cleric appears as a specific aggravating factor.

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132. Cf. *Ibid.*

133. *Episcopal consecration without an apostolic mandate* (can. 1387)

Can. 1013 strictly establishes that "No Bishop is permitted to consecrate anyone a Bishop unless it is first evident that there is a pontifical mandate." to carry out said consecration. Regardless now of any consideration on the sacramental validity of the act itself, the violation of the prohibition imposed by can. 1013 constitutes a delict, which equally affects both the ministers of episcopal ordination and the subjects who receive the consecration. It is a delict which, as far as ministers are concerned, can only be committed by bishops, since otherwise different delicts would be constituted (cf. n. 121).

On June 6, 2011, the then Pontifical Council for Legislative Texts issued a Declaration for the correct application of this canon, considering in particular the culpability of ministers. Since it is a rite in which the participation of several ministers is necessary, all those who "lay on their hands and recite the consecratory prayer at ordination" are to be considered co-perpetrators (cf. n. 31) of the delict, even if each of them "must be considered individually and according to their personal circumstances as regards incurring the penalty of excommunication *latae sententiae*" [*Communicationes* 43 (2011) pp. 30-33].

The penalty foreseen for this delict is the censure of excommunication *latae sententiae* (cf. n. 36) provided that the required circumstances exist. Furthermore, the delict can be punished *ferendae sententiae* in the appropriate manner, particularly in the cases foreseen by can. 1324 §3 (cf. n. 25).

134. *Priestly or diaconal ordination without dimissorial letters* (can. 1388 §1)

Every candidate to the diaconate or to the presbyterate must be ordained by the proper Bishop, or by another Bishop to whom the

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133. Can. 1387 - Both the Bishop who, without a pontifical mandate, consecrates a person a Bishop, and the one who receives the consecration from him, incur a *latae sententiae* excommunication reserved to the Apostolic See.

134. Can. 1388 - §1. A Bishop who, contrary to the provision of can. 1015, ordained someone else's subject without the lawful dimissorial letters, is prohibited from

proper Bishop has delivered legitimate dimissorial letters for ordination, as indicated in cans. 1015 and 1016. Against eventual transgressions of this norm, can. 1388 §1 outlines the delict of the Bishop who, without legitimate dimissorial letters, ordains the subject of another Bishop or, in any case, subject to another Ordinary. This delict, which can only be committed by Bishops, also has consequences for those who receive orders in such conditions.

This delict is punished *latae sententiae*, with different sanctions for the minister and for the ordained. The Bishop who commits the delict is punished with the automatic prohibition of not being able to confer the sacrament of orders for one year. The ordained subject, on the other hand, is punished with the censure of suspension (cf. n. 39) which prevents him from exercising the orders received until his situation is regularized.

135. *Concealment of censures or irregularities in receiving orders* (can. 1388 §2)

Can. 1388 §2 has recovered a delict considered in can. 2375 of the 1917 Code, which had not been included in the penal norms of 1983. To protect the sacrament of Holy Orders, the discipline of the Church has always established certain requirements for the candidate, outlining various kinds of irregularities and impediments (cf. cans. 1040 ff.), as well as the methods for their eventual acquittal or dispensation. Can. 1043 specifies that "the faithful are bound by the obligation to reveal the impediments to sacred orders, if they are aware of them, to the Ordinary or the parish priest, before ordination"; a duty that primarily concerns the candidate himself. In this regard, can. 1388 §2 now outlines, as a delict, the willful concealment by the candidate of

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conferring orders for one year. The person who received the order is *ipso facto* suspended from the order received.

§2. A person who comes forward for sacred orders bound by some censure or irregularity which he voluntarily conceals is ipso facto suspended from the order received, apart from what is established in canon 1044, §2, n. 1.

135. Cf. *Ibid.*

such circumstances, in order to obtain the sacrament of orders without hindrance. The delict, therefore, arises when it is the candidate himself who voluntarily conceals the irregularity or impediment or any other kind of censure.

In addition to the canonical impediment that the irregular reception of orders represents (cf. can. 1044 §2, 1°), the penalty established for this delict is the *latae sententiae* censure of suspension (cf. n. 39), until the situation is not regularized.

136. *Illegitimate exercise of the sacred ministry* (can. 1389)

The last canon of the section on delicts against the sacraments contains a provision of a general nature which includes any other conduct not explicitly mentioned in the previous canons of the entire title III (cf. nn. 116-135) which in any case represents an illegitimate exercise of a priestly function or other sacred ministry. This is therefore a broad category, open to very different delicts, which include violations of the preceptive liturgical provisions on the manner and conditions of celebrating the sacraments, the use of formulas other than those permitted in the liturgy, etc.

Taking into account the generic nature of the penal type, can. 1389 limits itself to establishing the obligation on the part of the Authority to punish this kind of conduct, leaving it up to whoever is responsible to judge the assessment of the just penalty to be applied, which can be an expiatory penalty (cf. n. 43) or even a censure (cf. n. 34).

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136. Can. 1389 - A person who, apart from the cases mentioned in cans. 1379-1388, unlawfully exercises the office of a priest or another sacred ministry, is to be punished with a just penalty, not excluding a censure.

IV. Delicts against good reputation and the delicts of forgery

137. *Delicts against good reputation and the delict of forgery* (Title IV)

This section of Book VI of the Code substantially corresponds to the one promulgated in 1983. Compared to the previous section, the title has now been expanded with an explicit reference to "good reputation", now specifically protected by can. 1390 §2: this section was previously called simply "the delict of forgery".

138. *False allegation of solicitation* (can. 1390 §1)

Can. 1390 §1 considers a delict the false denunciation made to the ecclesiastical superior of a confessor for having committed the delict of solicitation typified by can. 1385 (cf. n. 129). The delict requires that a formal indication be made to the ecclesiastical Authority, by the person pretending to have been a victim or by a third person; the report must be made with malice, that is, one must be aware that it is a matter of slander. It is not necessary that the denunciation be made to the Ordinary of the confessor, it being sufficient to make it to an Authority which by office is bound to act or, at least, to inform whoever is to activate a penal procedure. Nor is it required, in order to constitute this offence, that the Authority proceed against the innocent confessor: the very fact of the denunciation is sufficient. For this reason,

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137. Title IV of this second part of Book VI is entitled "Offences against reputation and the delict of falsehood" (*De delictis contra bonam famam et de delicto falsi*), and consists only of cans. 1390 and 1391. In the 1983 discipline, the section was simply entitled "The delict of forgery".

138. Can. 1390 - §1. A person who falsely denounces a confessor of the delict mentioned in can. 1385 to an ecclesiastical Superior incurs a *latae sententiae* interdict and, if a cleric, he incurs also a suspension.

§2. A person who calumniously denounces some other offence to an ecclesiastical Superior, or otherwise unlawfully injures the good name of another, is to be punished according to the provision of can. 1336 §§2-4, to which moreover a censure may be added.

§3. The calumniator must also be compelled to make appropriate amends.

since the delict is punished with a *latae sententiae* sanction, some authors intend that even the anonymous denunciation constitutes a delict. Instead, the delict does not concern possible false reports before the civil authorities, which will be governed by the civil penal law of the place.

As has been said, this delict carries a *latae sententiae* penalty of interdict (cf. n. 38), if the complainant is a lay person, and of suspension if he is a cleric (cf. n. 39). In any case, §3 of can. 1390 imposes the duty of justice to give adequate satisfaction before receiving the remission of the censure: "The calumniator must also be compelled to make appropriate amends". This satisfaction must tend to bring the injured party back to the previous situation of good repute that had been taken away from him by the false denunciation, which therefore cannot be restored only with financial compensation.

139. *Delict of false allegation* (can. 1390 §2)

In a more general context, §2 of this can. 1390 provides for the false allegation made to the Authority of any other canonical delict. In this hypothesis the falsely accused can be any person, not necessarily a cleric, who in accordance with the law can be punished for having committed a canonical offence. Also in this case, it is not necessary that the allegation be made to the Ordinary of the person who is falsely accused, and it is not even required that the allegation be taken into consideration by the Authority. On the other hand, in order to constitute the delict, it is necessary to make the allegation with the awareness of its falsehood (cf. n. 138).

The delict of falsely allegation must obligatorily be punished by the Authority with a *ferendae sententiae* expiatory penalty (cf. n. 42), proportionate to the gravity of the allegation, to which a canonical censure may be added (cf. n. 34). Also in this case, the obligation of proper reparation must be added to the penalty imposed: "The calumniator must also be compelled to make appropriate amends." (can. 1390 §3).

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139. Cf. *Ibid.*

140. *Delict of defamation* (can. 1390 §2)

Different from the previous ones (although contained in the same can. 1390 §2) is the delict of defamation. To commit this delict, it is not necessary to make a formal allegation of a delict. It is sufficient that a false circumstance that harms the good reputation of others is reported to the Authority in an illegitimate way (for example, with regard to one's private life, one's professional activity, etc.). In order to constitute this delict, there must be an allegation or circumstance of a certain magnitude, capable of causing a significant loss of reputation; moreover, the constitution of the delict requires the knowledge that it is a falsehood. However, even if the complaint is made in good faith, the damage caused to goodwill, although not constituting a delict, would force justice to make reparation, especially if the person is invested with authority.

As in the previous case, the Authority is obliged to initiate sanctioning measures for the delict of defamation. The person damaging another person's reputation must be punished with a *ferendae sententiae* expiatory penalty (see n. 42), proportionate to the degree gravity of the complaint (see n. 66). A canonical censure can possibly be added to this sanction (cf. n. 34), always considering the duty to make adequate reparation: "The calumniator must also be compelled to make appropriate amends" (can. 1390 §3).

141. *Forgery or manipulation of an ecclesiastical documents* (can. 1391, 1°)

n. 1 of Canon 1391 typifies a variety of possible criminal behaviour connected with the use of ecclesiastical documents of a public nature.

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140. Cf. *Ibid.*

141. Can. 1391 - The following are to be punished with the penalties mentioned in can. 1336 §§2-4, according to the gravity of the delict: 1° a person who composes a false public ecclesiastical document, or who changes, destroys, or conceals a genuine one, or who uses a false or altered one; 2° a person who in an ecclesiastical matter uses some other false or altered document; 3° a person who, in a public ecclesiastical document, asserts something false.

The delicts typified in this regard consist in (a) the material preparation of a false document or the malicious alteration of a true one; (b) the destruction or concealment of such a document, so that it cannot be used; (c) the use for one's own purposes of consciously false or altered ecclesiastical public documents, whether in an ecclesiastical or civil context. In all three cases, ecclesiastical and public documents are involved. The delict of producing or altering a public document must necessarily include the intent to use the prepared material in any way, although this action may also be carried out by a different person. The destruction or concealment of documents is perfected by the specific acts aimed at these actions.

For these offences, the Authority is now required to compulsorily initiate the sanctioning procedure. In all three cases, the penalties to be imposed, according to the gravity of the delict, are expiatory penalties provided for by can. 1336 §§ 2-4 (cf. n. 43).

142. *Ecclesiastical use of other false documents* (can. 1391, 2°)

In connection with the delicts considered in the previous n. 141, can. 1391, 2° typifies the use in ecclesiastical settings of civil documents, or in any case non-ecclesiastical, false, or altered documents. The specific difference with respect to the delicts of n. 141 concerns the non-ecclesiastical nature of the document which, however, is used in ecclesiastical settings: in this case, it is up to the civil judicial system to prosecute the forgery of the document. As in the cases considered above, the delict requires awareness of the forgery of the document on the part of the subject.

Also, for this delict the Authority must compulsorily initiate the sanctioning procedure, and the penalty to be imposed, depending on the gravity of the delict, must be an expiatory penalty among those provided for by can. 1336 §§ 2-4 (cf. n. 43).

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142 Cf. *Ibid*.

143. *Falsification in a public ecclesiastical document* (can. 1391, 3°)

Finally, the 3° paragraph of can. 1391 outlines the delict committed to maliciously state a falsehood so that it is collected in a public ecclesiastical document (for example, in an act of an ecclesiastical notary, in a certification on the reception of some sacraments, etc.).

In this regard, it should be noted that when falsity is produced in the document with which a rescript of the granting of graces or dispensations is requested, either by *concealing the truth*, or by *affirming the falsehood*, in addition to the possible offence, the invalidity of the grace granted also occurs (Can. 63).

For this delict, the Authority must compulsorily initiate the sanctioning procedure and, depending on the gravity of the delict, the penalty to be imposed must be an expiatory penalty among those provided for by can. 1336 §§ 2-4 (cf. n. 43).

V. Delicts against special obligations

144. *Delicts against special obligations assumed by clerics and religious* (Title V)

As the rubric states, title V groups together the delicts committed mostly by clerics or religious, for breaches of obligations linked to one's state of life. Together with these, however, there are delicts that can also be committed by other faithful who eventually find themselves in the circumstances described (cf. can. 1396).

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143. Cf. *Ibid.*

144. Title V of the second part of Book VI of the *CIC* is entitled "Offences against special obligations" (*De delictis contra speciales obbligationes*) and comprises cans. 1392-1396. The name of this title is the same as that given in 1983. Some of the delicts are new, while that of child abuse has been moved to the next Title VI.

145. *Illegitimate abandonment of one's ministry* (can. 1392)

The reform of penal discipline now incorporates, among others, the delict of abandonment of the ecclesiastical ministry, which is entrusted to a cleric, as indicated in can. 1392. This is a delict which only concerns clerics – deacons, presbyters, or Bishops – members of an institute of consecrated life or a society of apostolic life, who abandon their ministry, voluntarily and illegitimately, that is, for an own unforced decision (cf. cans. 125; 1323, 3° and 4°; 1324, 5th and 8th) and without authorization from the Authority or the law, for a period of six continuous months (cf. cans. 201 §1 and 202 §2), also with the intention of evading the competent ecclesiastical Authority. Consequently, the behaviour that constitutes this delict has two material requisites: (1) the abandonment of the ministry within the indicated time and (2) the fact that it is an illegitimate abandonment. Furthermore, can. 1392 indicates two other intentional requirements: (1) that it be a voluntary abandonment, and (2) that it includes the intention to withdraw from the Authority on which the cleric depends.

In relation to this topic, although in a non-penal but rather disciplinary context, the special faculties granted to the Prefect of the Congregation for the Clergy on January 30, 2009, to declare the loss of the clerical state, under the conditions established in the text, must be considered as historical precedents of this norm, priests who have unilaterally abandoned their ministry. In a similar line, although in a different context, there is also the addition of a third number to can. 694 §1, implemented with the motu proprio *Communis vita*, of 19 March 2019 [*Communicationes* 51 (2019) pp. 15-17], on the basis of which the illegitimate absence from one's religious house for twelve consecutive months causes *ipso iure* the dismissal from the religious institute

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145. Can. 1392 - A cleric who voluntarily and unlawfully abandons the sacred ministry, for six months continuously, with the intention of withdrawing himself from the competent Church authority, is to be punished, according to the gravity of the delict, with suspension or additionally with the penalties established in can. 1336 §§2-4, and in the more serious cases may be dismissed from the clerical state.

(in this case the dismissal proceeds independently of the clerical condition of the subject, since it could also be a case of religious or of non-ordained religious).

The delict of abandoning the ministry or assigned office necessarily obliges the Authority to initiate the sanctioning procedure. The penalty foreseen by can. 1392 is always *ferendae sententiae*. Therefore, depending on the gravity of the delict, the censure of suspension (cf. n. 39) or even an expiatory penalty (cf. n. 42) will be imposed, chosen from among those indicated in can. 1336 §§ 2-4, without excluding the imposition of the perpetual penalty of dismissal from the clerical state in the most serious cases.

146. *Illegal exercise of a business or a commercial activity* (can. 1393 §1)

The clerical condition or religious life impose on the subjects a dutiful attitude towards material goods and full dedication to the commitments undertaken. Concretely, can. 286 forbids clerics to exercise any business or commercial activity, unless they receive permission from the legitimate Authority, which will normally be their Ordinary (cf. can. 285). Only permanent deacons are excluded from this prohibition, according to can. 288. In parallel, can. 672 imposes this same duty on religious. In both cases, of course, the prohibition does not concern the exercise of the office of bursar or analogous functions in favour of the diocese or the institute to which they belong.

In this context, can. 1393 §1 classifies as a delict the illegitimate exercise of this kind of economic activity, carried out for one's own interest or that of others. The term "exercising" used in this case by the law requires, as a prerequisite for the configuration of the delict,

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146. Can. 1393 - §1. A cleric or religious who engages in trading or business contrary to the provisions of the canons is to be punished with the penalties mentioned in can. 1336 §§2-4, according to the gravity of the delict.

§2. A cleric or religious who, apart from the cases already foreseen by the law, commits a delict in a financial matter, or gravely violates the stipulations contained in can. 285 §4, is to be punished with the penalties mentioned in can. 1336 §§2-4, without prejudice to the obligation of repairing the harm.

the carrying out of an activity in a more or less habitual or continuous way, and that it is not, instead, an occasional and well circumscribed act.

Having received news of such delicts, the Authority is obliged to initiate administrative or judicial penal procedures. The established penalty must be *ferendae sententiae* since the judge must choose between the expiatory penalties of can. 1336 §§ 2-4 (cf. n. 42) in accordance with the gravity of the delict in concrete terms.

147. *Serious violation of duties in economic matters* (can. 1393 §2)

Can. 1393 §2 introduced two new criminal forms in economic matters which concern only clergy and religious. Unlike the delicts of an economic nature defined in cans. 1376-1377, which mainly aim at the protection of ecclesiastical goods and the good administration of the patrimony of the Church, the delicts outlined by can. 1393 aim at the protection of the lifestyle proper to ministers and religious, due to the different commitments they assume with their incorporation into the clerical state or with religious profession.

While the delict of §1 of can. 1393 (cf. n. 146) punishes business activities, §2 typifies two criminal forms consisting in individual acts, and not in activities.

1) The first offence consists in carrying out acts of economic content which, according to the canonical or civil law of the country, constitute a delict. In this way, the commission of a civil delict in economic matters, regardless of who is the owner of the relative patrimony (an ecclesiastical property, the patrimony of the cleric or religious, the patrimony of others, etc.), also becomes a delict which must be punished independently of any civil sanction.

2) The second delict punished by the same norm consists in carrying out acts or following conduct which, in any way whatsoever, represents a grave violation of the obligations that can. 285 §4 imposes on all clerics and can. 672 to religious, to abstain from any managerial

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147. Cf. *Ibid.*

activity of a patrimonial nature without the permission of their own religious Ordinary or Superior.

The norm contained in can. 1393 §2 is a "closure" norm which intends to include any criminal conduct in this matter, carried out by clerics or religious, which has not been specifically described as a delict by law.

Also, in this case the sanction must be proportionate to the gravity of the act. The Ordinary is obliged to initiate the sanctioning procedure and to impose an expiatory penalty chosen from among those indicated in can. 1336 §§ 2-4 (cf. n. 42), which must necessarily include the reparation of any damage caused by the delict.

148. *Attempted marriage* (can. 1394)

Can. 1394 considers the delict of attempted marriage by those who are prevented from doing so due to obligations related to the sacred order.

In fact, regarding the duties of clerics, can. 277 imposes the law of celibacy on clerics of the Latin rite, while can. 654 establishes the same duty with the assumption of the three evangelical counsels in religious consecration. These two commitments, different in the modality of assumption, generate analogous duties in the subjects on the basis of which the diriment impediments established by cans. 1087 and 1088, which invalidate any attempt at celebration of marriage without the necessary dispensation. It is in this context that the penal discipline typifies the delict of attempted marriage.

§1 of can. 1394 concerns the case of clerics (secular or religious), while §2 refers specifically to non-clerical religious in perpetual vows,

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148. Can. 1394 - §1. A cleric who attempts marriage, even if only civilly, incurs a *latae* sententiae suspension, without prejudice to the provisions of can. 194 §1 n. 3, and 694 §1 n. 2. If, after warning, he has not reformed or continues to give scandal, he must be progressively punished by deprivations, or even by dismissal from the clerical state.

§2. Without prejudice to the provisions of can. 694 §1 n. 2, a religious in perpetual vows who is not a cleric but who attempts marriage, even if only civilly, incurs a *latae sententiae* interdict.

of one or the other gender. In both cases the delict is the same, the only difference being the personal circumstance (cleric or non-cleric religious) which entails a different penal treatment. As the text says, the delict is still committed even if one tries to contract a marriage that is only civilly valid, and regardless of any other intentions (including those of pity) that may exist. In fact, even a simulated deed has civil legal significance and is likely to cause scandal.

In terms of punishability, both cases must necessarily be sanctioned by the Authority, and first of all a censure is foreseen. In the case of clerics, whoever attempts marriage falls under the penalty of *latae sententiae* suspension (cf. n. 39), as well as *ipso iure* removal from the occupied ecclesiastical office (can. 194 §1, 3°). Furthermore, if he does not repent, he must be punished with successive privations (cf. n. 47), not excluding the perpetual penalty of dismissal from the clerical state (cf. n. 48). Instead, if the person attempting marriage is not a cleric, but a religious in perpetual vows, the initial sanction is the interdict *latae sententiae* (cf. n. 38), in addition to the *ipso iure* dismissal from the institute in accordance with can. 694 §1, 2°.

149. *Concubinage of a cleric* (can. 1395 §1)

Concubinage consists in habitual cohabitation, in spousal form, with a person of the other gender with whom one is not tied in marriage: however, if a civil marriage were to occur, the delict committed by a cleric would instead be the one first indicated in can. 1394 §1 (cf. n. 148). The canonical discipline outlines the delict of concubinage

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149. Can. 1395 - §1. A cleric living in concubinage, other than in the case mentioned in can. 1394, and a cleric who continues in some other external sin against the sixth commandment of the Decalogue which causes scandal, is to be punished with suspension. To this, other penalties can progressively be added if after a warning he persists in the delict, until eventually he can be dismissed from the clerical state.

§2. A cleric who has offended in other ways against the sixth commandment of the Decalogue, if the delict was committed in public, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.

§3. A cleric who by force, threats or abuse of his authority commits a delict against the sixth commandment of the Decalogue or forces someone to perform or submit to sexual acts is to be punished with the same penalty as in §2.

solely with reference to clerics held in celibacy (can. 277), whether secular or religious since there is no canonical delict if the facts are committed by non-clerical religious.

The ecclesiastical Authority is required to punish the delict of concubinage, by judicial or extrajudicial means. The sanction must always be imposed *ferendae sententiae*, first with a censure of suspension (cf. n. 39), to which, if the subject persists in the delict, other expiatory penalties can be gradually added (cf. n. 42), always preceded by the necessary admonition, up to the perpetual penalty of dismissal from the clerical state (cf. n. 48).

150. *Scandalous permanence in sin against the sixth commandment* (can. 1395 §1)

Distinct from the previous situation, even if it is treated by the same canon 1395 §1, is the situation of the cleric who, even without habitual cohabitation in spousal form, remains in another external sin against the sixth commandment, with public scandal. In reality, this hypothesis encompasses a wide plurality of situations which, without strictly falling within the notion of concubinage, must have the following four requisites: (1) that he is a cleric, (2) that the situations are habitual, i.e., not occasional, (3) that they are a sin against the sixth commandment, (4) that there be scandal.

As in the case of concubinage, the Authority is required to punish this delict (cf. n. 58), in its various ways of being committed, with a *ferendae sententiae* penalty, initially imposing the censure of suspension (cf. n. 39), and then adding, if the subject persists in the delict, other expiatory penalties (cf. n. 42), preceded by admonitions, up to the perpetual penalty of dismissal from the clerical state (cf. n. 48).

151. *Public sin against the sixth commandment* (can. 1395 §2)

§2 of can. 1395 defines as a delict the sin against the sixth commandment of the Decalogue committed publicly by a cleric, secular or religious. In this way, autonomy has been granted, as a separate

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150. Cf. *Ibid.*

151. Cf. *Ibid.*

offence, to a circumstance that in the text of the Code promulgated in 1983 was considered together with other situations, which have now been diversified. The previous text, in fact, has been broken down into three autonomous offences now defined in this 1395 §2, in the following §3 of the same canon (cf. n. 152), and in can. 1398 §1, which specifically concerns the delicts of sexual abuse of minors (cf. n. 159).

The particularity of the delict considered by §2 consists in the publicity with which the sin against the sixth commandment of the Decalogue is committed by a cleric, secular or religious. The specifying element is, therefore, the publicity of the sinful act, and the scandal it causes in the community and requires appropriate reparation. In any case, it is a delict whose content remains open since it is not concretely specified what kind of behaviour it is dealing with, even if it always pertains to the sixth commandment.

In these circumstances, the Authority is obliged to intervene (cf. n. 58), instructing the punitive measure. Taking into account the variety of possible cases, the determination of the penalty is left to the determination of who is called to judge, according to the gravity of the circumstances, without excluding the imposition of the perpetual penalty of dismissal from the clerical state (cf. n. 48).

152. *Violence or abuse of authority to commit acts against the sixth commandment* (can. 1395 §3)

§3 of can. 1395 contains a delict not considered in the penal discipline promulgated in 1983, resulting from a re-elaboration of the previous text of can. 1395 §2, with the addition of new details.

In concrete terms, this text typifies the criminal behaviour of clerics, consisting in forcing someone, through the use of violence, threats or abuse of their position of authority, to carry out or undergo sinful acts against the sixth commandment on behalf of third parties. Naturally, this must be persons not mentioned in can. 1398 (minors, person

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152. Cf. *Ibid*.

who habitually have an impaired use of reason, etc.), because otherwise it would constitute a different delict (cf. nos. 159, 160). Even in this case, the delimitation of the delict is fairly wide, as it covers various kinds of conduct.

If the action were committed not by a cleric, but by a member of an institute of consecrated life or a society of apostolic life or by a lay believer enjoying ecclesiastical dignities or offices, the delict punishable by canon 1398 §2 would be configured instead (cf. n. 162).

This offence requires a penal sanction like that seen in n. 151. The Authority must always initiate the punitive measure (cf. n. 58) and, depending on the gravity of the case (cf. n. 66), impose an adequate penalty, without excluding the penalty of dismissal from the clerical state (cf. n. 48).

153. *Violation of the obligation of residence* (can. 1396)

The last delict outlined in the section concerning the violations of special obligations concerns the violation of the obligation of residence to which one is bound by reason of the ecclesiastical office. In fact, certain ecclesiastical offices, normally with *cura animarum*, imply a duty of residence which, if violated in a serious form, constitutes a delict. It is, therefore, a different delict from the abandonment of the ecclesiastical ministry received (cf. n. 145), since it concerns only the ecclesiastical office or pastoral assignment that has been entrusted.

The commission of this delict requires, therefore, a serious violation of the duty of residence which one has by reason of the ecclesiastical office of which he is the holder. It is therefore not the case of the religious who abandons his own community (cf. can. 694 §1, 3°), nor that of one who does not respect the imposed sentence of residing in a specific territory (cf. n. 45), but only the subject who by virtue of his ecclesiastical office is bound by a duty of residence (cf. cans. 395, 410, 533, 550). In some circumstances, the delict could also arise on the basis of the general duty of clerics who do not have a residential office

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153. Can. 1396 - A person who gravely violates the obligation of residence which binds by reason of ecclesiastical office is to be punished by a just penalty, not excluding, after a warning, even privation from office.

"not to leave their diocese for a considerable time ... without at least presumed permission from their own Ordinary" (can. 283 §1).

In these cases, the ecclesiastical Authority must compulsorily initiate a sanctioning procedure (cf. n. 58), and whoever must judge will impose a penalty appropriate to the gravity of the case (cf. n. 66), not excluding, subject to admonition, deprivation from office (can. 196).

VI. DELICTS AGAINST HUMAN LIFE, DIGNITY AND FREEDOM

154. *Delicts against human life, dignity and freedom* (Title VI)

The rubric of this title has incorporated the reference to the "dignity" of the person that was missing in the previous wording. In the three paragraphs that now make up can. 1397 all the delicts previously contemplated by this title are now condensed, while can. 1398, completely new, has incorporated delicts that previously had different arrangements. The canonical system is aware that these canonical delicts are also delicts that the State prosecutes with a method of investigation and punishment that the Church does not possess [*Communicationes* 9 (1977) p. 318].

155. *Delict of murder* (can. 1397 §1)

Can. 1397 §1 typifies, the delict of voluntary homicide, committed by any person, whether cleric or layman. However, if the delict is committed against the persons indicated in can. 1370 (cf. nn. 95-97) such

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154. Title VI of the Second Part of Book VI of the *CIC* is entitled "Offences against human life, dignity and liberty" (*De delictis contra hominis vitam dignitatem et libertatem*), and consists only of cans. 1397-1398. In the 1983 discipline, this section had the narrower title of "Delicts against human life and freedom".

155. Can. 1397 - §1. One who commits homicide, or who by force or by fraud abducts, imprisons, mutilates or gravely wounds a person, is to be punished, according to the gravity of the delict, with the penalties mentioned in can. 1336. In the case of the homicide of one of those persons mentioned in can. 1370, the offender is punished with the penalties prescribed there and also in §3 of this canon.

§2. A person who actually procures an abortion incurs a *latae sententiae* excommunication.

§3. If offences dealt with in this canon are involved, in more serious cases the guilty cleric is to be dismissed from the clerical state.

a delict will be considered specifically as a delict committed against the ecclesiastical authorities.

Even when it is not punished, this delict represents a canonical irregularity, both for receiving a sacred order (cf. can. 1041, 4°) and for exercising it (can. 1044 §1, 3°), which requires the necessary dispensation.

The delict must necessarily be punished by the ecclesiastical Authority (cf. n. 58) according to the gravity of the delict committed, with expiatory penalties mentioned in can. 1336 (cf. n. 42). When the perpetrator is a cleric, in particularly serious circumstances the perpetual penalty of dismissal from the clerical state can also be imposed on the offender, as stated in §3 of the canon (cf. n. 48).

156. *Delict of injury* (can 1397 §1)

The second delict configured by can. 1397 §1 is the delict of injury, that is voluntarily causing serious physical wounds or some kind of mutilation to someone. Here too, one is dealing with a delict that must be malicious and, as has been said before, if committed against the subjects mentioned in can. 1370 is to be considered as a delict against ecclesiastical Authority (cf. nn. 95-97). The category of mutilation also includes sterilization which would properly constitute the delict if it were not voluntarily requested.

This delict also represents a canonical irregularity for receiving a sacred order (cf. can. 1041, 5°) and for exercising it (can. 1044 §1, 3°), regardless of whether it has been punished or not.

As in the previous case, these delicts must necessarily be punished by the Authority (cf. n. 58) according to their gravity, with expiatory penalties mentioned in can. 1336 (cf. n. 42). If the perpetrator is a cleric, in particularly serious cases the penalty of dismissal from the clerical state can be imposed, as indicated in §3 of the canon itself (cf. n. 48).

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156. Cf. *Ibid*.

157. *Delict of kidnapping or detention* (can. 1397 §1)

Finally, the third offence codified in canon 1397 §1 is the attack on individual freedom, consisting of the abduction or detention of someone procured by violence or fraud. Also implicit in the criminal offence is the sale and reduction to slavery, already present in Canon 2354 of the 1917 Codex.

This offence, like the previous ones, must necessarily be punished by the ecclesiastical Authority (cf. n. 58) with an expiatory penalty mentioned in can. 1336 §§ 2-4 (cf. n. 42), according to the gravity of the fact. Furthermore, if the offender were a cleric, in the most serious cases the penalty of dismissal from the clerical state can be imposed, as indicated in §3 of the canon itself (cf. n. 48).

158. *Delict of abortion* (can. 1397 §2)

The delict of abortion has been maintained in the canonical order also as a protective measure of the *nasciturus* in a cultural context in which, in the legal systems of the States, the decriminalization of this serious delict has become generalized. Abortion is defined as any action voluntarily intended to kill the *foetus*, inside or outside the womb from conception onwards, as indicated in the then Pontifical Council for Legislative Texts in its answer of 23 May 1988 [*AAS* 80 (1988) 1818]. However, for the commission of the delict it is necessary that the death of the *nasciturus* (*effectu secuto*) takes place, thus requiring a minimum of "objective certainty" that allows the action of the criminal law, which necessarily excludes anti-conception practices from the delict, even if they are used for technically abortifacient means, as they leave no external evidence of the delict having taken place.

Since it is a delict that requires the involvement of third parties in order to be committed, they too are considered culpable of the delict (see n. 31), even if their degree of participation can differ. In fact, those who voluntarily cooperate in this delict, also as instigators or necessary material implementers, are considered such. Moreover, the

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157. Cf. *Ibid.*

158. Cf. *Ibid.*

delict of abortion represents a canonical irregularity in receiving a sacred order (cf. can. 1041, 4°) and in exercising it (can. 1044 §1, 3°) which must be dispensed.

The penalty imposed on those who commit the delict of abortion, as well as on those who participate in it, is the *latae sententiae* censure of excommunication (cf. n. 36). n. 12 of the Letter *Misericordia et miseria*, of November 21, 2016, in *AAS* 108 (2016) 1051-1058, granted until new provisions to all confessors, the faculty to absolve from the sin of abortion.

159. *Abuse of minors or vulnerable persons* (can. 1398 §1, 1°)

§1 of the present can. 1398 considers various penal cases consisting in the abuse of minors committed by clerics. §2 deals with delicts of this kind committed by religious, consecrated persons or lay people who carry out any type of office or ministry in the Church.

The delict considered above all by §1 of can. 1398 concerns the sexual abuse of a minor of eighteen years of age, or of a person who habitually possesses an imperfect use of reason or of a subject to whom the law recognizes equal protection. Such a delict occurs even if the person is consenting.

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159. Can. 1398 - §1. A cleric is to be punished with deprivation of office and with other just penalties, not excluding, where the case calls for it, dismissal from the clerical state, if he: 1° commits a delict against the sixth commandment of the Decalogue with a minor or with a person who habitually has an imperfect use of reason or with one to whom the law recognises equal protection; 2° grooms or induces a minor or a person who habitually has an imperfect use of reason or one to whom the law recognises equal protection to expose himself or herself pornographically or to take part in pornographic exhibitions, whether real or simulated; 3° immorally acquires, retains, exhibits or distributes, in whatever manner and by whatever technology, pornographic images of minors or of persons who habitually have an imperfect use of reason.

§2. A member of an institute of consecrated life or of a society of apostolic life, or any one of the faithful who enjoys a dignity or performs an office or function in the Church, who commits a delict mentioned in §1 or in can. 1395 §3 is to be punished according to the provision of can. 1336 §§2-4, with the addition of other penalties according to the gravity of the delict.

The Code has avoided using the expression "vulnerable subject" here, as it represents a notion that is not yet well-defined or doctrinally shared in the broad ambit in which canon law is in force. Therefore, the legislator prefers to use a formulation that was broad enough to include various forms of weakness and fragility of the victim.

This delict is reserved to the Dicastery for the Doctrine of the Faith by article 6, 1° NSST if it concerns minors or persons who habitually have an imperfect use of reason. In contrast, in the case of any other "vulnerable" persons, jurisdiction over the delict is not reserved, and it is for the Ordinary to act (for the notion of vulnerable person, see VELM art. 1 §2, b).

The Ecclesiastical Authority is required to start the preliminary investigation if the *notitia criminis* is verisimilar (cf. n. 58), informing the Dicastery as soon as this news is confirmed by the investigation and following its instructions. The established penal sanction is penal privation from office (can. 196) in addition to the expiatory penalties mentioned in can. 1336 §§ 2-4 (cf. n. 42) appropriate according to the gravity of the delict, without excluding dismissal from the clerical state (cf. n. 48).

160. *Induction of minors to acts of pornography* (can. 1398 §1, 2°)

In connection with the previous offence, n. 2 of Canon 1398 §1 punishes in concrete terms the delict of a cleric who recruits or induces a minor under the age of eighteen or a person who habitually has an imperfect use of reason or is otherwise "vulnerable" (cf. n. 159) to perform or participate in exhibitions of a pornographic nature, real or simulated. Consequently, the delict also includes the passive participation of the child, for example by viewing such an exhibition.

As in the previous case, the delict is reserved to the Dicastery for the Doctrine of the Faith if it concerns minors or persons who habitually have an imperfect use of reason (art. 6 §1 NSST); in the remain-

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160. Cf. *Ibid.*

ing cases, it will be up to the Ordinary to act accordingly. The Ordinary is always obliged to initiate the preliminary investigation (cf. n. 58), informing the Dicastery as soon as the *notitia criminis* is confirmed (in reserved cases) and subsequently following the instructions received from the Dicastery. Here too, the penal sanction established is the criminal deprivation of office (can. 196) in addition to the expiatory penalties referred to in canon 1336 §§ 2-4 (cf. n. 42) according to the gravity of the delict, without excluding dismissal from the clerical state in extreme cases (cf. n. 48).

161. *Possession and trafficking of pornographic material relating to minors* (can. 1398 §1, 3°)

The Code incorporates in can. 1398 §1, 3° the delict configured by art. 6, 2° NSST concerning the acquisition, possession, or distribution by a cleric, in whatever manner and by whatever technology, of pornographic images of minors or of persons who habitually have an imperfect use of reason. The text now adds the action of "exhibiting" these images.

As in the previous cases, once the preliminary investigation, which the Ordinary is obliged to initiate, confirms the *notitia Criminis* (cf. n. 58), it is necessary that he informs the Dicastery for the Doctrine of the Faith and follow its instructions. The foreseen penal sanction, in addition to the penal privation of office (can. 196), consists in expiatory penalties mentioned in can. 1336 §§ 2-4 appropriate to the gravity of the case (cf. n. 42), without excluding dismissal from the clerical state (cf. n. 48).

162. *Delicts of sexual abuse committed by non-clerics* (can. 1398 §2)

The second paragraph of can. 1398, as has already been said, concerns delicts committed by non-clerics and, concretely, by members of institutes of consecrated life or by societies of apostolic life or by lay faithful who enjoy dignity or perform ecclesiastical offices or functions. In concrete terms, the same actions defined in can. 1398 §1, that

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162. Cf. *Ibid.*

is abuse of minors, incitement to pornography, child pornography (cf. nn. 159, 160, 161) and the two established in can. 1395 §1 concubinage and scandalous persistence in the sin against the sixth commandment (cf. nn. 149, 150), if committed by the consecrated or by the lay faithful indicated above. None of these delicts is reserved to the Dicastery for the Doctrine of the Faith whose competence concerns only delicts committed by clerics.

In these circumstances, and with respect to each of the five delicts indicated, the competent Ordinary is required to initiate sanctioning measures, after having received news, and once this news is confirmed ed in the preliminary investigation (cf. n. 58). These delicts must be punished with the expiatory penalties mentioned in can. 1336 §§ 2-4 (cf. n. 42) according to the gravity of the circumstances, not excluding deprivation from office (can. 196) (cf. n. 47).

VII. General closing norm

163. *General closing norm* (Title VII)

The universal scope of application of canonical penal law and the diversity of cultural components in the places where it is effectively in force has determined the inclusion, as an element of closure of the penal system, of a general rule which allows for the punishment of other behaviours which positively harm the social order of the Church and require a reaction on the part of the Authority to protect the three purposes now described in can. 1311 §2: "the reinstatement of justice, the correction of the offender and the reparation of the scandal" (cf. n. 4).

This is particularly necessary if one considers the fact that the canonical penal system has tried to reduce to a minimum the typology of delicts, limiting it to cases truly necessary for the life of the Church

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163. Title VII of Pars II of Book VI of the Code of Canon Law is titled '*Norma generale*" (*Norma generalis*) and contains a single can. 1399 which closes the penal treatment of the Code and has not undergone any editorial changes in the revision of the Book promulgated by Const. Ap. *Pascite gregem Dei.*

(cf. n. 11), making the probability high that there are unlawful behaviours not classified as delicts which nonetheless require the intervention of the Authority.

164. *Exceptional punishability of other behaviours against divine or canonical law* (can. 1399)

Can. 1399 starts, in fact, from the awareness that a behaviour that is not typified as a delict by some canonical norm cannot be criminally punished. In fact, the can. 221 §3 states that "The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law." Furthermore, can. 1321 §2 specifies that "No one can be punished unless the commission by him or her of an external violation of a law or precept is gravely imputable by reason of malice or of culpability." (cf. n. 18).

Nonetheless (cf. n. 163), can. 1399 establishes that, even if it is not typified in a law or established in a penal precept (cf. n. 55), an "external violation of a divine or canonical law" can be punished if it is a violation of "special gravity" which demands punishment and "the urgent need to prevent or repair the scandal" (cf. n. 4).

In the event of particularly serious behaviours which, like those described, clearly claim the need to act criminally, it could be assumed that the offender was also aware that his conduct was such as to require a punitive reaction. Sometimes, the circumstances will allow the Authority to act by first giving a warning penal precept to the offender (cf. n. 55) and, in case of disobedience, it will proceed as foreseen with the imposition of the penalty given in the form of a precept. If, on the other hand, the gravity and urgency of the case determine direct recourse to can. 1399, it will be necessary to verify beforehand the conditions imposed by the canon: (1) that it is an external conduct, (2) that it violates a divine or canonical law, (3) that it possesses a special gravity and, lastly, (4) that there is an urgent need to prevent or repair the scandal. It is, however, a choice that should be used only in extreme cases and provided that there are no other avenues of implementation.

PART THREE

ELEMENTS OF AN EXTRAJUDICIAL PENAL PROCEDURE

I. GENERAL CONSIDERATIONS

165. *Remarks on the specific procedure regarding this part of the User Guide*

The third part of this *User Guide* is devoted to the penal procedure to be followed by the Ordinary in cases within his competence when, in accordance with Canon 1341, he decides to follow the extrajudicial procedure for inflicting penalties. In this Section, which is intended only as an aid to the application of the norms, the ways in which the Ordinary should initially handle the *notitia criminis*, how to carry out the necessary "preliminary investigation" (cf. n. 175) and finally how the extrajudicial procedure necessary to arrive at the final penal decree should be carried out will be indicated.

Consequently, in the case of delicts subject to other procedures, the specific indications in such cases must be observed. For example, in the case of delict of child abuse committed by clerics (cf. nos. 159-161), it is always necessary to follow the indications given in the *Vademecum* published by the Dicastery for the Doctrine of the Faith.

In addition, in the case of other of the more serious delicts reserved to the Dicastery for the Doctrine of the Faith by the motu proprio *Sacramentorum sanctitatis tutela*, it will be necessary to supplement the comments below with the specific indications given by that Dicastery on how to proceed.

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165. Cf. DICASTRY FOR THE DOCTRINE OF THE FAITH, *Vademecum on some procedural points in the treatment of cases of sexual abuse of minors committed by clerics*, 5 June 2022; JOHN PAUL II, motu proprio *Sacramentorum sanctitatis tutela*, of 30 April 2001, in AAS 93 (2001) 737-739, as amended by the *Rescriptum ex Audientia SS.mi* of 11 October 2021 which approves the Norms on delicts reserved to the Congregation for the Doctrine of the Faith in *L'Osservatore Romano*, 7 December 2021, p. 6; *Congregation for the Doctrine of the Faith*, *Rescript ex audientia*, 21 May 2010, in AAS 102 (2010) 419-479.

Finally, if the Ordinary considers it opportune to proceed against the accused in a judicial way rather than an extrajudicial way, and therefore intends to undertake a criminal trial, the rules to be followed will be the ordinary ones set out in cans. 1717-1731, to which reference will not be made here, since we will deal only with the extrajudicial punitive procedure, which is currently less regulated in the Code of Canon Law.

166. *Prior conditions of activity*

In order to initiate a sanctioning measure, it is necessary, first of all, that there be a concrete external act performed by a member of the faithful under the jurisdiction of the respective Ordinary that requires consideration with a view to possible punishment (cf. n. 18). It is therefore necessary for there to be external acts performed by Catholic faithful, because non-baptised or non-Catholic Christians are not subject to the Church's penal legislation under Can. 11.

Finally, it is necessary for the pastor to have the legal capacity to impose penalties because he is his own subject or according to his territorial or personal jurisdiction (cf. n. 58).

It is also necessary to avoid from the outset any sort of preliminary judgment on the person and on the facts, bearing in mind the presumption of innocence of each person (cf. n. 17) and the need imposed by law to evaluate the person's behaviour only at the end of the procedure and on the basis of the elements intervening in the provision (cf. n. 216). The offender's culpability emerges only at the end of the extrajudicial penal procedure, through the penal decree of conviction. Up to that moment, he is not, from the point of view of law, either culpable or delinquent, but, depending on the moment of the investigation, he will be referred to as being reported, investigated, suspected, prosecuted, or formally charged.

In each of the moments of the procedure, it is necessary to recognize and safeguard the faculties and possibilities to act that the law

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166. Can. 11 - Merely ecclesiastical laws bind those who have been baptized in the Catholic Church or received into it, possess the sufficient use of reason, and, unless the law expressly provides otherwise, have completed seven years of age.

(both natural and canonical) recognize in the faithful whose behaviour is being investigated (cf. n. 209). It is also necessary to avoid from the outset anything that could jeopardize the future exercise of the right of defence by the implicated subject.

167. *The various phases of the penal procedure*

The implementation methods required of Ordinaries in order to ensure Church discipline and the observance of canonical criminal law go through various 'stages' in time, in each of which certain evaluations of a substantial nature must be made and choices made by virtue of duties, rights or faculties that have legal consequences both for the Authority and for the offender and also for any other person involved in the investigation.

In general terms, there are four stages of the extrajudicial penal procedure illustrated in this *User Guide*: 1° learning of the news of a possible delict and necessary initial actions; 2° carrying out of the preliminary investigation (if the news of the delict is at least verisimilar); 3° execution of the extrajudicial penal procedure (provided that it becomes necessary on the basis of the results of the preliminary investigation); and 4° conclusion of the extrajudicial penal procedure.

As has been said, this Guide takes into consideration only the extrajudicial process since the jurisdictional procedure which takes place before the ecclesiastical tribunal is already suitably regulated by cans. 1717-1731 of the *CIC*.

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167. The norms of the Code of Canon Law concerning the judicial penal process (cans. 1717-1731), divide the text into three parts: Chapter I, the preliminary investigation, Chapter II, the behaviour of the process, and Chapter II, The action for repairing the damage.

II. Acquisition of the news of a possible delict

168. *Duty of the Authority to evaluate any news of a possible delict*

Ecclesiastical Authority has the duty to carefully evaluate any information received regarding the commission of canonical delicts, having the obligation to investigate and ascertain those that are at least likely. Can. 1717 §1 imposes the duty to investigate with prudence, personally or through a suitable person, the facts and the imputability of the subject, unless given the circumstances such an investigation is not entirely superfluous.

Even if the duty of vigilance incumbent on the Ordinary does not imply that he must continuously carry out investigative checks on the people and institutions employed by him, this does not mean that he can refrain from seeking suitable information, above all if he becomes aware of behaviours that cause scandal or disturb the order of the community.

169. *Meaning of "news of a delict"*

News of the delict or *notitia criminis* means any information about a possible delict that reaches the Ordinary in any way. Therefore, it can be a matter of a formally presented complaint, of information about a delict received directly or indirectly, of published news, of rumours spread in the community, or of data accidentally emerging in the course of other activities, etc.

On certain occasions, the news may arrive anonymously, without the possibility of identifying the complainant. News received from

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168 Can. 1717 - §1. Whenever an ordinary has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous.

§2. Care must be taken so that the good name of anyone is not endangered from this investigation.

§3. The person who conducts the investigation has the same powers and obligations as an auditor in the process; the same person cannot act as a judge in the matter if a judicial process is initiated later.

169. Cf. *Vademecum* DDF, nn. 9-15.

anonymous sources should be treated with great caution and examined thoroughly but should not be rejected. Such news must be taken into consideration should other confirmatory elements emerge.

Similarly, news of delicts coming from sources whose credibility is doubtful at first impression should not be discounted from the outset.

If the news of the delict does not provide precise detailed information about the delict (about the subjects, times, actions, etc.), the Authority has the duty to investigate proportionately to the relevance of the delict and the damage it could have caused.

170. *Defining elements of delicts and behaviours to be corrected in other ways*

The news of the delict (cf. n. 169) must refer to a possible delict, that is to say to a behaviour which, if it were actually committed, would fall within the framework of one of the delicts identified by the canonical legislator, even if in this phase it is not yet possible to ascertain precisely which delict it actually concerns, which emerges at a later stage. In fact, any concrete determination of the delict charged to the subject takes place at a later time, when the formal accusation is made once the administrative or judicial penal procedure has started (see n. 204).

In order to take legal action, it is necessary that the behaviour has previously been classified as a delict by the ecclesiastical Authority: by the Holy See, by the diocesan Bishop or in some cases also by the Episcopal Conference. The general nature of the delicts established by the Holy See is described in nn. 85-164 of this *User Guide.* However, the Holy See or the diocesan Bishop could add other delicts to these by means of specific laws (cf. n. 9) or with penal precepts given individually (cf. n. 13).

Behaviours that have not been previously typified by the legislator do not constitute a delict and cannot be punished as such except in the circumstances outlined by can. 1399 (cf. n. 164).

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170. Cf. cans. 1364-1399 *CIC*.

However, other inappropriate behaviours not constituting a delict carried out by subjects who are required to behave appropriately to their condition, such as clerics or religious or members of institutes or societies, can be corrected not penally but through suitable "disciplinary" measures adopted by the legitimate Authority within their respective jurisdiction (Cf. n. 191). To this end, the use of ancillary sanctions, such as remedies or penance (cf. n. 52) and, in particular, penal precepts (cf. n. 54) is particularly useful.

171. *Evaluation by the Ordinary of his own competence*

Upon receipt of the *notitia criminis*, the authority must first assess its competence and jurisdiction in the case. If it considers that he has jurisdiction, he must follow up, as will be seen below. If, on the other hand, by reason of the territory or the persons, or the nature of the conduct reported, the case is not under the jurisdiction of the Authority that received the report, he must inform the competent ecclesiastical Authority once he has sufficiently ascertained the correctness of the information received (see n. 176).

Indeed, it may be that the case must be submitted to another Ordinary who will have to be duly informed. In other cases, on the other hand, it may be a delict "reserved' to the Holy See or, specifically, to the Dicastery for the Doctrine of the Faith: in such cases, the Ordinary will have to inform the competent dicastery once sufficient information has been gathered.

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171. Can. 1405 - §1. It is solely the right of the Roman Pontiff himself to judge in the cases mentioned in can. 1401: 1º those who hold the highest civil office of a state; 2º cardinals; 3º legates of the Apostolic See and, in penal cases, bishops; 4º other cases which he has called to his own judgment.

§2. A judge cannot review an act or instrument confirmed specifically (*in forma specifica*) by the Roman Pontiff without his prior mandate.

§3. Judgment of the following is reserved to the Roman Rota: 1º bishops in contentious matters, without prejudice to the prescript of can. 1419, §2; 2º an abbot primate or abbot superior of a monastic congregation and a supreme moderator of religious institutes of pontifical right; 3º dioceses or other physical or juridic ecclesiastical persons which do not have a superior below the Roman Pontiff.

172. *Assessment of the verisimilitude of the delict report received*

Once the news of the delict has been received, the first duty that the Authority has is to evaluate its verisimilitude because there is no duty to investigate any news that reasonably appears unlikely. This assessment, which is the responsibility of the Authority, is a first logical step, normally very fast, prior to the initiation of the investigation, properly so called (see n. 184). This assessment will lead to the assessment of all the elements that reasonably lead to the decision to initiate the investigation or not.

Verisimilar news is not necessarily "probable" or "very probable" news, nor is it "true" news, as the time has not yet come to make this assessment. Verisimilar news would be that which has the *appearance of truth* in that, at first sight, it does not reasonably offer elements of inconsistency or falsehood. It will therefore be necessary to make a prudent but usually rapid evaluation.

If, due to the set of circumstances, it is believed that the news of the delict is not verisimilar, it is recommended not to proceed with it, even if it will be prudent to keep some elements of documentation as well as some information on the reasons that supported the non-verisimilitude. In these cases, if it concerns delicts reserved to the Dicastery for the Doctrine of the Faith, it is advisable to notify the Dicastery.

173. *Archiving of the news*

Only when the news is evidently false and lacks verisimilitude, or refers to "incorrect" behaviour but not classified as a delict, is it advisable to leave a report of the fact by means of a Decree in which the Authority briefly explains its assessment of the case (cf. canon 51 *CIC*), ordering it to be deposited with the existing documentation of the case in the secret archive of the Curia.

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172. Cf. *Vademecum* DDF, nn. 18-19.

173. Can. 1719 - The acts of the investigation, the decrees of the ordinary which initiated and concluded the investigation, and everything which preceded the investigation are to be kept in the secret archive of the curia if they are not necessary for the penal process.

If it concerns non-criminal but improper behaviours, depending on the circumstances, the Authority will discreetly try to ascertain them and will carefully evaluate the opportunity to prevent possible delicts in time by correcting the interested party according to can. 1339 (cf. nn. 53-55) and also leaving a confirmation of the fact in the secret archive of the Curia.

174. *Initiation of the preliminary investigation*

If, after an initial assessment, the elements of the delict report received are confirmed, can. 1717 imposes on the Authority the obligation to formally start an investigation, called "preliminary investigation", having effectively ascertained that the reported conduct constitutes a delict. Consequently, either the news is archived (cf. n. 173), or if not, the Authority must necessarily start the preliminary investigation following the methods indicated below.

The preliminary investigation must be activated by a Decree of the Ordinary (cf. Appendix 1), as indicated in can. 1719. This investigation must take place regardless of the fact that another one is underway by the civil authorities. However, if the civil law prohibits the carrying out of parallel investigations, the ecclesiastical Authority must refrain from initiating the preliminary investigation as long as this prohibition remains.

III. Initiation of the preliminary investigation

175. *What does the preliminary investigation consist of?*

The investigation mentioned in can. 1717 §1 is not yet a process, but a previous preparatory phase, which consists in the prudent investigation that the Authority is required to carry out, by itself or through another delegated subject, in order to ascertain with sufficient foundation, through testimonies and elements, whether or not it is necessary to formally initiate the investigative procedure aimed at

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174. Can. 51 - A decree is to be issued in writing, with the reasons at least summarily expressed if it is a decision.

175. Cf. *Vademecum* DDF, nn. 33-36. For Can. 1717, See above not 168.

imposing a penal sanction against a subject. The preliminary investigation, therefore, must not try to arrive at any kind of conviction regarding the culpability of a subject, which will only happen at the end of the process itself. The only purpose of this investigation is, therefore, to collect elements and examine them, so as to be able to subsequently start the penal trial.

176. *Which Authority is required to initiate the preliminary investigation*

The initiation of the preliminary investigation belongs to the Ordinary who has received the news of the delict, which can be that of the person accused or that of the place where the alleged delict took place (cf. n. 171). Both Ordinaries will have to take action to avoid conflicts of competence or duplication of work. In the event that news of the delict reaches another Authority, the latter must promptly transfer the news to the Ordinary required to act. Any omission of these duties could constitute offences punishable under the Code (cf. n. 103), as mentioned in the motu proprio *As a Loving Mother*.

In the case of religious, the proper Ordinary will depend on the nature of the Institute and on the condition of the religious himself.

177. *Circumstances where the preliminary investigation is unnecessary*

In certain circumstances, the news of the delict that reaches the Authority, in addition to being verisimilar (cf. n. 172), could possess all the elements of evidence that lead to the direct adoption of the decision to initiate a penal procedure, making it entirely superfluous to make further investigation of the data received (can. 1717 §1 *CIC*). These are cases where the delict is so notorious that it leaves no doubt and makes it unnecessary to make the normal preliminary investigation required in general terms by law (except in delicts reserved to the DDF, see n. 178).

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176. Cf. *Vademecum* DDF, nn. 21-31. Cf. Francis, motu proprio *As a loving Mother*, of 4 June 2016, in *AAS* 108 (2016) 715-717.

177. Cf. *Vademecum* DDF, n. 37.

Since the preliminary investigation is not necessary in these circumstances, the ecclesiastical Authority must issue a Decree indicating precisely: 1° the decision to omit the preliminary investigation because it considers it superfluous, in accordance with can. 1717 §1 *CIC*; 2° the provision for the immediate initiation of the penal judicial process or the extrajudicial process.

In both cases, however, depending on the verisimilitude of the facts reported, the nature of the transgression and the competing circumstances, the Authority will also assess the need to issue another Decree as of this moment, imposing preventive prescriptions on the subject (cf. Appendix 3), appropriate to the possible risk of scandal or reiteration of the delict and in any case avoiding any injury to his good reputation, taking into account the presumption of innocence (cf. n.17).

178. *Preliminary investigation and acquisition of civil investigations*

The preliminary investigation may not be necessary due to the acquisition by the ecclesiastical Authority of the investigations carried out by the civil authority regarding the same delict. Such investigations may sometimes be sufficient to ascertain the need to initiate the sanctioning process directly. However, in such circumstances, it will be necessary to evaluate very carefully the procedural development and the arguments that emerge during the civil investigations since the relative evaluation criteria can vary, sometimes significantly, with respect to what is prescribed by canon law.

179. *Delicts reserved to the Dicastery for the Doctrine of the Faith*

If the news of the delict concerns a matter reserved to the Dicastery for the Doctrine of the Faith, according to the articles 1-7

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178. Cf. *Vademecum* DDF, n. 36.

179. Cf. motu proprio *Sacramentorum sanctitatis tutela*, art. 10 §2.

Can. 1722 - To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of justice and cited

of the NSST, the procedural rules established in the aforementioned document are applicable.

In these cases, since the local Authority is not competent, the latter cannot alone make the decision to omit the preliminary investigation (cf. n. 177) and is required to inform the Dicastery and request instructions on how to proceed. Moreover, in cases of *delicta graviora* (in fact, other delicts are also reserved to the Dicastery), art 10 §2 of the NSST authorizes the ecclesiastical authority to take the precautionary measures provided for in Canon 1722 against the subject as soon as the investigation begins.

180. *Canonical advice, press information and confidentiality*

When having to carry out the preliminary activities in view of a possible penal process, the Ordinary can freely consult in private with experts in penal canonical matters.

However, it is necessary to *absolutely avoid* any inopportune or illicit dissemination of information to the public (such as press releases) that could jeopardize subsequent investigations or damage the person's reputation and presumption of innocence (see n. 17).

Official secrecy is already in force at this moment, even if it is not possible to impose any bond of silence on the alleged victims or complainants, other than those deriving from the moral law.

181. *Decree initiating a preliminary investigation*

In most cases, when, after an initial evaluation, the ecclesiastical Authority deems the news received verisimilar, he must further investigate the data collected in order to gather the elements necessary to be able to initiate a penal trial with due foundation. To do this, he

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the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases.

180. Cf. *Vademecum* DDF, nn. 29-30.

181. Cf. *Vademecum* DDF, n. 40.

must issue the Decree to initiate the preliminary investigation (see Appendix 1), in which he must essentially: 1° summarily determine the object of the investigation in relation to the information received; 2° designate a person to carry out these investigations prudently (can. 1717 §2); 3° indicate in the text the powers enjoyed by the person chosen, on the basis of can. 1717 §3.

182. *Designation of the person in charge of the preliminary investigation and of the notary*

The subject chosen to carry out the preliminary investigation must be suitable and prudent. It is up to the ecclesiastical Authority to evaluate the suitability of such a person, taking into account the circumstances that contribute to the case and the effective possibilities available. In choosing the person, one can orient themselves by following the criteria indicated in can. 1428 §§1-2. In choosing the person in charge of the investigation, the Authority must evaluate, among other things, the type of relationship that he could have with the person under investigation, the necessary conditions of age, prudence, discretion, training.

In this phase, if the Authority deems it appropriate or necessary, he can assume the task of carrying out the investigation by himself without delegating it to anyone else. Be that as it may, the appointee should be an expert in canon law or, at least, possess a certain expertise to direct his investigations in a practical way in order to obtain the necessary elements to shed light on the information received. It is also possible to give this task to a priest from another ecclesiastical circumscription or to a member of a religious institute, always with the permission of the respective Ordinary.

Furthermore, in making this choice, the Ordinary will take into account that the person indicated will not be able to participate as judge in any subsequent process, according to what is indicated in can. 1717 §3 and, by analogy with this criterion, not even as Assessor

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182. Cf. *Vademecum* DDF, nn. 39, 41-42.

in an extrajudicial process. The same thing is foreseen, for cases reserved to the Dicastery of the Doctrine of the Faith, by art. 20 §4 NSST.

Even if the law does not require it, and it is not necessary *ad validatatem*, it may be advisable to appoint a Notary to assist whoever carries out the preliminary investigation, guaranteeing thus the public faith of the deeds drawn up by him (cf. cans. 483 §2, 1437 § 2 *CIC*; see Appendix 2).

The intervention of the Promoter of Justice is not necessary in this preliminary phase.

183. *Notifying the accused of the initiation of a preliminary investigation*

At the beginning of the preliminary investigation, unless it is necessary to adopt some disciplinary measures (cf. n. 58), or that the Ordinary deems it appropriate, it is not convenient to inform the person accused to avoid any kind of interference, unless by the nature of things such interferences are absolutely to be excluded. This avoids jeopardizing the freedom of witnesses or making it difficult to collect evidence.

It should be specified, in fact, that at this initial stage of the investigation the subject was by no means "accused" of any delict and that the investigation that is underway is entirely aimed at providing the Authority with the elements necessary to understand whether he must charge the suspect and start the judicial or extrajudicial process.

IV. The course of the preliminary investigation

184. *Purpose of the preliminary investigation*

The central objective of the preliminary investigation is to collect data useful for the foundation of the facts reported and to evaluate the the *notitia criminis*. This stage is not about collecting all the elements: this will eventually have to take place during the process itself.

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183. Cf. *Vademecum* DDF, nn. 52-55.

184. Cf. *Vademecum* DDF, n. 33.

However, the elements and testimonies acquired during the preliminary investigation may possibly be used to set up the penal procedure itself. If the preliminary investigation is well conducted, the entire subsequent process becomes clearer and shorter over time.

The preliminary investigation has the purpose of providing the elements necessary for the Authority to take the decision to start the penal procedure or to close the investigation. Therefore, it is not necessary to collect all the evidence and testimonies that lead to the certainty of the delict committed at this time, as this task belongs to the trial.

185. *Observance of civil laws and communication with civil authorities*

The entire activity of the preliminary investigation must be carried out in compliance with the civil laws of the State. Consequently, if it is obligatory under civil law to inform the authorities of the State of a concrete delict, the Ordinary will proceed to inform the competent authorities, in the manner prescribed by the law itself and according to any Conventions between the State and the Holy See. This obligation must also be fulfilled when it can reasonably be assumed (for example, due to the statute of limitations) that no civil proceedings will be initiated. Naturally, what has been said before is *absolutely not applicable* when it is necessary to observe the sacramental seal, or the requirements linked to the internal forum.

Regarding communications with the civil authorities, it is also necessary to respect the will of the presumed victims, aimed, for example, at protecting their own family privacy, or that of those who have allegedly suffered damage because of the presumed delict, if this does not contradict State laws and within the limits in which the civil laws permit to carry out said activity. In this regard, it may be necessary to encourage them to exercise their rights and report the facts directly to the civil Authorities, avoiding any form of dissuasion, and for prudence keeping documentary evidence of the advice given in this sense.

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185. Cf. *Vademecum* DDF, nn. 48-50.

It will also be necessary to evaluate whether it is appropriate to inform the witnesses and the people involved in the investigation that, in the event of a judicial seizure or an order for the delivery of documents by the civil authority, it will no longer be possible for the ecclesiastical Authority to guarantee the confidentiality of the depositions acquired at the rectory.

In this sense, if the civil judicial Authority produces a formal legitimate request for the delivery of documents concerning the investigation, ordering their judicial seizure, the Ordinary is required to cooperate with said Authority within the limits established by canonical legislation. Should doubts arise about the legitimacy of the request, the Ordinary will consult with legal experts and inform the Pontifical Representative.

186. *Duties of the person in charge of the preliminary investigation*

Unless the Authority provides otherwise, the person in charge of the preliminary investigation possesses all the faculties indicated in can. 1428 §3 *CIC*. He is the one who collects elements of evidence. He also decides which element of evidence or witnesses will be involved involved in the process. Furthermore, he chooses the methods through this is done.

The Chancellor or other Notaries of the Curia can exercise their office of giving public faith to the acts of the investigation, recording the testimonies, the inspection of the places or the collection of mate-

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186. Can. 1428 - §1. The judge or the president of a collegiate tribunal can designate an auditor, selected either from the judges of the tribunal or from persons the bishop approves for this function, to instruct the case.

§2. The bishop can approve for the function of auditor clerics or lay persons outstanding for their good character, prudence, and doctrine.

§3. It is for the auditor, according to the mandate of the judge, only to collect the proofs and hand those collected over to the judge. Unless the mandate of the judge prevents it, however, the auditor can in the meantime decide what proofs are to be collected and in what manner if a question may arise about this while the auditor exercises his or her function.

rial or documents, certifying the veracity of the documents, etc. However, if the Authority deems it appropriate, he can also assign *ad hoc* notaries to assist the investigation manager.

In cases reserved to the Dicastery for the Doctrine of the Faith, it is necessary to follow what it establishes or what is contained in the Guidelines given by the respective Episcopal Conferences for such inquiries, including what concerns collaboration with the civil authorities.

Collaboration with the civil authorities is to be particularly taken into account when, based on local circumstances, one is dealing with canonical delicts which are also civil crime and may have been the subject of a complaint and investigation by the civil justice system or local police.

At the end of the preliminary investigation, the person charged with carrying it out will deliver to the Ordinary all the documents resulting from the investigation together with his own evaluation of the result.

Both in carrying out the preliminary investigation and in all the actions that follow during the case, the authority is required to always remain within the limits that the civil law of the country allows to act, refraining from any initiative that may be legally illicit.

187. *The duration of the preliminary investigation*

Exigencies of equity and justice require that the preliminary investigation mentioned in can. 1717 is carried out in a limited time frame and with the necessary celerity, taking into account that the purpose of this investigation is only to reach the well-founded verisimilitude of the *notitia criminis* and the corresponding existence of the *fumus delicti*, making necessary in this case the initiation of the prosecution. It will be during the judicial process or extrajudicial process that all the remaining testimonies or proofs required to reach the conclusion will have to be collected. The unjustified extension of the duration of the

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187. Cf. *Vademecum* DDF, n. 66.

preliminary investigation can constitute negligence on the part of the ecclesiastical Authority.

188. *Carrying out of the preliminary investigation*

Based on the faculties he enjoys (cf. n. 186), the person in charge of the preliminary investigation can employ all the legitimate and prudent means he deems necessary to investigate the facts and circumstances in order to determine the imputability of the subject (cf. canon 1717 §1 *CIC*).

The preliminary investigation must try to expand the information on the criminal facts, the circumstances and the imputability of the subject to allow a weighted assessment on the need to start the sanctioning procedure. However, it is not necessary at this stage to collect detailed elements of evidence (testimonials or expert reports), as this will eventually be done in the subsequent penal procedure. What is needed in this preliminary phase is to reconstruct, as far as possible, the facts on which the accusation is based and the general circumstances of the alleged delict. The preliminary investigation helps one arrive at an initial assessment of the damage caused and of the scandal, as well as of any problematic circumstances concerning the biographical profile of the subjects involved. In this initial phase, it will be particularly appropriate to collect the elements of evidence or testimonies considered most crucial for clarifying the cause (including the results of investigations or trials conducted by the civil authorities) and above all those which, over time, risk being lost and to be able to be useful in the development of the case. The elements collected at this time will normally become evidence along the extrajudicial process.

To listen to a minor or a "vulnerable" subject during the preliminary investigation, one must follow the procedures established by civil legislation for these circumstances. Minors and "vulnerable" subjects are to be accompanied by a person they fully trust. Caution must also be taken to see that there no contact or meeting between them and the person under investigation.

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188. Cf. *Vademecum* DDF, nn. 34-36, 44, 41.

If during these preliminary investigations new delicts attributed to the accused should emerge, it will be necessary to take note of them, and to give clear notice to the Ordinary so that he can investigate them further in the same investigation or in another way. In fact, any new delicts will necessarily require specific testimonies and evidence, distinct from those of the other delicts previously investigated, but evidently essential for the new assessment that will need to be made.

In all these cases, it will be of particular importance to accredit, through cross-reporting, the credibility of the alleged victims, of the complainants and of the witnesses who intervene in the investigation. Witnesses must also be informed that, in the event of judicial seizure, it will not be possible for the ecclesiastical Authority to guarantee the confidentiality of their testimony.

189. *Duty of secrecy*

Those who are charged with carrying out the preliminary investigation are bound to observe secrecy, according to what is indicated in can. 471, 2°. This is a duty that concerns every phase of the procedure but, in particular, the preliminary investigation: since there is still no defendant, "it must be ensured that this investigation does not endanger anyone's good reputation" (can. 1717 §2, whether the accused, the accuser, any alleged victim, or even the Authority who activates the preliminary investigation (Cf. nn. 17, 191).

Witnesses can be imposed a duty to maintain secrecy about what they have revealed in the investigation and what they have come to know during that phase, whereas they cannot be required to maintain such secrecy with respect to what they know about the facts investigated to their own knowledge.

However, it should be kept in mind that this secrecy strictly concerns those in charge of the investigations and those who act in an

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189. Cf. *Vademecum* DDF, n. 30.

Can. 471 - All those who are admitted to offices in the curia must: 1º promise to fulfill their function faithfully according to the manner determined by law or by the bishop; 2º observe secrecy within the limits and according to the manner determined by law or by the bishop.

official capacity, as it can be suggested but not imposed on third parties. In particular, such a secret cannot be imposed on any presumed victims or legitimate complainants.

190. *Notifying the accused and the right of the accused to a lawyer*

There is no uniform criterion regarding the appropriate moment to inform the suspect of the preliminary investigation against him. This is a decision that the Ordinary will have to make from time to time, taking into account the nature of the presumed delict and the set of concurrent circumstances.

There are, however, some parameters on the basis of which the Ordinary will have to make the decision to notify the suspect already in the course of the preliminary investigation: 1° avoid tampering with the evidence; 2° ensure the good reputation of all the people involved; 3° collect all the clues that may be useful; 4° always guarantee a prudent comparison of the acquired data; 5° ensure in any case the right of defence.

Where the risk of interfering with the prior investigation can be reasonably excluded, it is appropriate to provide the suspect with brief information about the reasons for the investigation, limited to the extent necessary to elicit from him/her information or details useful for clarifying the investigation. Otherwise, if it is not necessary to hear his testimony in order to counteract information or to ensure the right of defence, it may be appropriate to refrain from communicating with the suspect on the matter until such time as a decision has been made to follow penal nal proceedings (see paragraph 204).

In any case, from the moment in which the suspect is informed about the ongoing investigation, *it will be necessary to allow him to make use of a trusted lawyer chosen by him*, even if this is not yet mandatory at this stage.

191. *Disciplinary measures that may be necessary*

When the circumstances require it, the ecclesiastical Authority can take certain disciplinary measures (other than the precautionary ones [Cf. 206]) against the suspect. The reason why these measures are necessary (formally different from those allowed only once the process has started) is that they help protect the good reputation of the people involved, they help protect the public good, they help avoid scandal and they help prevent the recurrence of what was reported. Can. 1722 explicitly authorizes the adoption of precautionary measures "at any stage of the process". However, during the preliminary investigation, with just cause and on the basis of the ordinary attributions that are proper to it (cf. can. 392), the ecclesiastical Authority can adopt by Decree (cf. Appendix 3) adequate disciplinary measures, proportional, and reasonably limited in time: for example, by limiting the exercise of the pastoral ministry or ecclesiastical office of the subject under investigation, even in cases not reserved to the Dicastery for the Doctrine of the Faith.

The concrete content of these disciplinary measures and the "type" of measure must correspond to the type of delict being investigated and the nature of the scandal being sought to prevent: prohibiting confessions to minors, for example, would not be the most appropriate measure in an investigation of an economic nature. Moreover, in adopting such measures, one cannot fail to take into account the fact that the new canon 1321 §1 calls for the presumption of innocence to be protected at all times (cf. n. 17), which also requires a proportional use of these measures.

The measures that the Ordinary can adopt in these circumstances are similar to those indicated in can. 1722. The Ordinary can choose

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191. Can. 1722 - To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases.

the one most appropriate to the circumstances of the case: removing the person from the sacred ministry or from an ecclesiastical office or task, imposing or forbidding him to reside in some place or territory, or even forbidding him from public participation in the Eucharist. In any case, the measures adopted can be modified by means of a new Decree, in the course of the investigation, aggravating or attenuating them, depending on the circumstances and also on the attitude of the subject.

Can. 1717 §2 requires that in adopting these measures "the good reputation" of the person under investigation is not endangered: moreover, they naturally remain subordinate to the final outcome of the preliminary investigation. Consequently, the Authority is *required* in justice to cancel the "disciplinary" measures (possibly adopted with the *notitia criminis,* following can. 392) if he decides not to start the penal case. On the other hand, he has the obligation to transform them with a new Decree (See Appendix 8) into actual "precautionary" measures, ex can. 1722, in the event that the penal investigation of the case is decided, having heard the Promoter of Justice and citing the accused himself as prescribed by the aforementioned canon.

Lastly, it is also a duty of justice on the part of the authority to limit the use of this type of measure to what is strictly necessary, both in terms of content and duration; moreover, he is obliged to formally declare by a new decree that the measures cease when he decides not to proceed with them, since they cease by law with the end of the penal trial (can. 1722). It is a strict duty of justice for the competent authority to ensure, even formally, that these measures cease, a duty that *must* also extend to *repairing* any consequences that may have damaged the good reputation of the person concerned.

192. *How to impose a disciplinary measure at this phase of the procedure*

As has been said, the Ordinary can impose disciplinary measures, even during the preliminary investigation (cf. n. 179), but not on the basis of can. 1722, but rather by virtue of his own competences as proper Ordinary which, in the case of the diocesan Bishop, are mentioned in can. 392. Consequently, they can be administrative acts of a precautionary nature, not carried out in the context of the penal trial, but prior to it (Cf. n. 58).

In any event, this measure is not a criminal sanction; penalties will only be imposed at the end of the trial, either by administrative decree or by judgment. This detail should be made clear to all those who intervene in any capacity, in particular the accused, so that it does not appear as if this measure is some sort of final judgment on the culpability of the accused.

Disciplinary measures are imposed by means of a "penal precept" (cf. n. 54) in the form of a Decree, prepared according to cans. 49 ff. (see Appendix 3). What might be the content of the provisional measures has already been mentioned in n. 191.

In the event that, based on the above (see n. 191), it is necessary to modify or revoke the provisional measures, it will still be necessary to proceed through a new Decree of the Ordinary, legitimately notified to the suspect, in which the revocation or modification is made.

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192. Cf. *Vademecum* DDF, n. 61. In the case of Bishops see: Can. 392 - §1. Since he must protect the unity of the universal Church, a bishop is bound to promote the common discipline of the whole Church and therefore to urge the observance of all ecclesiastical laws.

§2. He is to exercise vigilance so that abuses do not creep into ecclesiastical discipline, especially regarding the ministry of the word, the celebration of the sacraments and sacramentals, the worship of God and the veneration of the saints, and the administration of goods.

193. *Public releases*

Canon 1717 §2 recalls the duty of justice to protect (particularly at this time of the investigation) the good name of the persons involved (cf. canon 220), both the presumed victims or complainants and the accused himself, who enjoys, as canon 1321 §1 recalls, the presumption of innocence (cf. nos. 17, 191). These principles *must,* consequently, guide the various steps to be taken during the prior investigation and, in particular, guide the way news is communicated to the media.

At the same time, however, the principles enunciated also oblige to prevent any "illegitimate infringement" of rights, so that it is not (necessarily) a breach of good reputation to prudently disclose information about the existence of an accusation when it is made so as not to endanger the public good. The legitimacy of these communications will always depend on the circumstances of each case, which it is up to the Ordinary to assess carefully.

If the *notitia criminis* has become public knowledge, already during the previous investigation, or if it is considered essential in order to safeguard the common good, the Authority may assess the appropriateness of issuing an official communication in a prudent manner, stating that an investigation has been commenced into the matter. In such communications, one must try to use essential and concise forms, avoiding any sensational methods, in order to respect the wishes of the presumed victims as much as possible and, above all, to refrain from any advance judgement (whether in the personal name of the person making the communication, or in the name of the Church or Institute to which the person belongs) on the on the person under investigation, which would represent a kind of prejudice on the merit of the facts.

An imprudent management of the news could constitute in certain cases the delict referred to in can. 1390 §2, the duty of reparation also having to be taken into account (cf. n. 140).

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193. Cf. *Vademecum* DDF, nn. 44-46.

194. *Conclusion of the preliminary investigation and relative Decree*

When the Ordinary, either directly or through the person in charge of the investigation, and availing himself of the advice of the experts consulted by him, considers that he has gathered the necessary elements to make a decision on the matter, he must, by means of his own Conclusion Decree (Appendix 6), declare the preliminary investigation concluded. If, on the other hand, the Ordinary is of the opinion that some aspect of the investigation must be further investigated, he shall at this point instruct the person in charge of this investigation to proceed accordingly.

In the event that he deems the investigation carried out sufficient (except in cases within the competence of the DDF, which will be discussed later) the Ordinary must adopt, with express motivation *saltem summarie* in the decree, one of these three resolutions: 1° dismissal of the case, 2° adoption of effective disciplinary measures, 3° initiation of the judicial or extrajudicial process.

1° *Archiving of the case.* If the Ordinary considers that the elements gathered during the preliminary investigation do not reasonably support a formal accusation against the subject, he must order the case to be archived by Decree (cf. n. 173). In this case, he must send

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194. Cf. *Vademecum* DDF, n. 68.

Can. 1718 - §1. When it seems that sufficient evidence has been collected, the ordinary is to decide: 1º whether a process to inflict or declare a penalty can be initiated; 2º whether, attentive to can. 1341, this is expedient; 3º whether a judicial process must be used or, unless the law forbids it, whether the matter must proceed by way of extrajudicial decree.

§2. The ordinary is to revoke or change the decree mentioned in §1 whenever new evidence indicates to him that another decision is necessary.

§3. In issuing the decrees mentioned in §§1 and 2, the ordinary is to hear two judges or other experts of the law if he considers it prudent.

§4. Before he makes a decision according to the norm of §1 and in order to avoid useless trials, the ordinary is to examine carefully whether it is expedient for him or the investigator, with the consent of the parties, to resolve equitably the question of damages.

the entire documentation gathered during the investigation to the secret archives of the Curia (can. 1719). Furthermore, he must proceed to cancel any provisional measures taken against the subject (cf. n. 191).

2° *Adoption of effective disciplinary measures*. In certain cases, the Ordinary can adopt specific disciplinary measures of a pastoral nature in this phase aimed at the amendment of the offender, deeming that it is not necessary to properly initiate the penal sanctioning procedure. These disciplinary measures are not penal sanctions, and that must be said to the interested parties. They can be adopted only in cases where they are necessary and suitable for the situation. They can also help restore justice and obtain reparation for the scandal (can 1341). In fact, an option such as the one indicated in can. 1718 §1, 2° is possible only in some circumstances: it will also be necessary to take into account the past behaviours of the subject and also the impact that the delict may have on the community (cf. nn. 61-62). The type of disciplinary measures that can be adopted in such circumstances consist in limitations in the exercise of the ministry (see, for example, cans. 764, 974), more or less extensive in consideration of the case, as well as adequate penal remedies or penance (see n. 53), or certain penal precepts to be observed (see n. 54).

3° *Initiate the judicial or extrajudicial process*. The third possibility that the Ordinary has at the end of the preliminary investigation is to issue the Decree initiating the procedure for inflicting or declaring the penalty (in the case of *latae sententiae* penalties. The Ordinary can proceed judicially or extrajudicially. He is bound to initiate one of these procedures when the elements gathered lead him to believe that "through the paths dictated by pastoral solicitude" or through the prescribed admonitions or reproofs, it is not possible to "sufficiently obtain the re-establishment of justice, the amendment of the offender, the reparation of the scandal" (can. 1341). In this case, if appropriate, the Ordinary can hear two judges or other experts in law (cf. can. 1718 § 3).

If the documentation collected during the preliminary investigation prevents further punitive procedures from being initiated, it must in any case be kept in the secret archive of the Curia (can. 1719).

The initiation of the penal process does not require the existence of "certainty" about the culpability of the subject: this is a fact that will have to emerge later, during the penal process itself. At this moment, all that is needed is an ensemble of elements that can be examined in a penal investigation.

Nor is this the time to consider whether any delict is time-barred or not, unless it is obvious: this will need to be ascertained precisely in the course of the procedure.

195. *The conclusion of the preliminary investigation in the cases reserved to the DDF*

In case where the verisimilitude of a more serious delict has emerged, the Bishop, instead of proceeding as indicated in n.194, must notify the Dicastery and then follow the instructions received.

According to art. 10 of the motu proprio *Sacramentorum sanctitatis tutela*, the Dicastery "if it does not take the case to itself due to particular circumstances, orders the Ordinary or the Hierarch to proceed further". Furthermore, if it is about a delict of abuse of minors (cf. nn. 159-161) it is necessary from the outset to follow the *Vademecum*, issued by the same Dicastery, on certain procedural points in the treatment of cases of sexual abuse of minors committed by clerics.

196. *Notification of the decree concluding the preliminary investigation*

At this point the accused, whether he had already been informed of the investigation or was unaware of it, must be made aware of the investigation that took place against him with the notification of the Decree of conclusion of the investigation according to cans. 54-56,

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195. Cf. *Vademecum* DDF, n. 69.

196. Can. 56 - A decree is considered to have been made known if the one for whom it is destined has been properly summoned to receive or hear the decree but, without a just cause, did not appear or refused to sign.

which reports the decision adopted by the Authority according to n. 194. However, the Ordinary will have to evaluate whether on certain occasions it is more appropriate not to make the investigation known to the person under investigation.

If it has been decided to initiate the extrajudicial penal procdure, and the delict is not reserved to the Dicastery for the Doctrine of the Faith, the notification to the person under investigation of the result of the investigation can take place on the occasion of the meeting mentioned in can. 1720: it is appropriate to notify the complainant of this decree.

197. *Possible modification of the decree concluding the preliminary investigation*

The possible subsequent appearance of new relevant elements in the investigation may determine the need to modify the Decree of conclusion of the investigation prior to, before or after having notified it. This can happen, for example, if the complainant confesses the falsehood of the accusation, or if a witness not heard before or a particularly important document appears. In these circumstances, the Ordinary, by means of a new Decree (which must also be notified in the manner indicated in n. 196), is required to modify the decision and the previous Decree (cf. n. 194) providing again according to the acquired data. The subsequent Decree takes precedence over the previous one, as indicated in can. 53.

198. *Possible equitable composition of the damages caused*

In addition to the penal consequences, the delicts can give rise to the duty of reparation for the damages caused (can. 128). In this regard, cans. 1729-1731 regulates how to promote the reparation of

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197. Can. 53 - If decrees are contrary to one another, a particular decree prevails over a general in those matters which are specifically expressed. If they are equally particular or equally general, the decree later in time modifies the earlier to the extent that the later one is contrary to it.

198. Can. 1718 - §1. When it seems that sufficient evidence has been collected, the ordinary is to decide: 1° whether a process to inflict or declare a penalty can be initiated; 2° whether, attentive to can. 1341, this is expedient; 3° whether a judicial

damages during the judicial process and can. 1718 §4 provides for the possibility of resolving certain situations according to justice without resorting to unnecessary judicial processes.

In these circumstances, provided that the delict does not fall within the competence of the DDF, the Ordinary (before issuing the Decree of conclusion of the preliminary investigation) must ask for the consent of the parties, possibly in writing, to resolve the issue fairly relating to the damages caused by the delict. In any case, it will be necessary to clarify to the parties involved that this initiative only intends to fairly resolve the question of the damages caused and does not presuppose any prior agreement or "plea bargain" to avoid the judicial or extrajudicial penal procedure which will have to independently take its course.

199. *The forms of procedure (judicial and extrajudicial) and the special faculty of the Dicasteries*

As prescribed by can. 1341, when the circumstances require it, the Ordinary is bound to initiate the trial procedure of the accused by means of a penal judicial process or by means of a extrajudicial penal procedure. Both methods have elements in common and important differences. It will be the Ordinary who will have to indicate which way to choose to deal with the allegation, taking into account the set of circumstances and the possibilities available to the Ordinary him-

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process must be used or, unless the law forbids it, whether the matter must proceed by way of extrajudicial decree.

§2. The ordinary is to revoke or change the decree mentioned in §1 whenever new evidence indicates to him that another decision is necessary.

§3. In issuing the decrees mentioned in §§1 and 2, the ordinary is to hear two judges or other experts of the law if he considers it prudent.

§4. Before he makes a decision according to the norm of §1 and in order to avoid useless trials, the ordinary is to examine carefully whether it is expedient for him or the investigator, with the consent of the parties, to resolve equitably the question of damages.

199. Cf. *Vademecum* DDF, nn. 85-91.

self. The choice must necessarily fall on the judicial process if the delict (not reserved to the DDF) provides for a perpetual penalty (cf. can. 1342 §2; n. 59).

The penal judicial process is carried out before the ecclesiastical tribunal established in the diocese (cans. 1419-1427), which acts following the order and path established for canonical processes in Book VII of the Code of Canon Law, with the peculiarities established for penal processes indicated in cans. 1717 ff. The judicial process is, in general, independent of the Ordinary, and its verdict is fixed in a *Sentence* which can be appealed in the higher levels of judgment according to the order of the instances of the ecclesiastical tribunals.

The extrajudicial process, also called administrative process, is, on the other hand, carried out by the Ordinary, by one of his delegates or by the subjects whom the Ordinary himself has designated *ad casum* to judge the case. This procedure follows more flexible rules than those of the judicial process, but nevertheless must respects the need for the punctual verification of the evidence, the protection of the right of defence, which ensures that the accused is heard assisted by a lawyer of one's choice with free access to the Acts, and the need to attain moral certainty (can. 1342 §1) *ex actis et probatis* (cf. n. 216). The extrajudicial process ends with a Decree of the Bishop, or of his Delegate, following the evaluations made by the persons in charge, which can be appealed through recourse before various Authorities, depending on the case.

In addition, in certain circumstances, the Bishop may turn to the competent Dicastery of the Roman Curia, urging them to apply the faculties granted to them (Cf. n. 3).

V. The course of the extrajudicial penal procedure

200. *Different procedures for a judicial process or concerning reserved cases*

All the indications in this Section of the Guide only concern the procedure to be followed if one intends to judge a delict not reserved to the Holy See by administrative means.

If the Ordinary has decided to judge the delict judicially by means of a trial before the ecclesiastical tribunals, cans. 1717-1731 concerning the criminal trial apply (which contain criteria to be observed also in an administrative way), and the set of norms established particularly in Book VII of the Code of Canon Law. In this case, the Ordinary terminates his action and leaves the next steps in the hands of the Promoter of Justice, as well as the competent Court: he transfers the minutes, as provided for in can. 1721, in order to prepare the libel of indictment with which the trial is brought before the local ecclesiastical court.

If it is a delict reserved to the Dicastery for the Doctrine of the Faith, it will be necessary to follow what is indicated in the motu proprio *Sacramentorum sanctitatis tutela*, as well as in the cited *Vademecum* on some procedural points in the treatment of cases of sexual abuse of minors committed by clerics, if related to delicts of this nature. In any event, it will be necessary to act following the procedural indications given by the Dicastery, which has exclusive competence to judge such matters.

Lastly, if one is dealing with other kinds of cases reserved to the Holy See (see, for example, can. 1405), it will be necessary to duly inform the Secretariat of State and follow the instructions received.

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200. Can. 1721 - §1. If the ordinary has decreed that a judicial penal process must be initiated, he is to hand over the acts of the investigation to the promoter of justice who is to present a libellus of accusation to the judge according to the norm of cans. 1502 and 1504.

§2. The promoter of justice appointed to the higher tribunal acts as the petitioner before that tribunal.

Equally, it will be necessary to follow the indications received if they are specific cases that the Holy See itself has reserved for itself.

201. *The main stages of the extrajudicial penal procedure*

When the Ordinary chooses to follow an extrajudicial penal procedure, he proceeds, briefly, through the following stages which will be examined below: 1° Decree initiating the procedure, 2° designations of the Instructor and Assessors, 3° summons of the defendant to disclose the indictment, 4° collection of testimonies and evidence presented by the accused or by the instructor, 5° study and evaluation of the reports, 6° Final Decree, 7° possible appeal against the Penal decree.

Although the above-mentioned *Vademecum* on certain points of procedure in the treatment of cases of sexual abuse of minors committed by clerics published on 16 July 2020 by the Congregation for the Doctrine of the Faith, and updated on 5 June 2022, applies only to cases of child abuse, it also defines the procedure to be followed in extrajudicial penal cases in the light of Canon 1720, and provides indications that (by analogy) may illuminate the choices to be made in non-confidential cases.

202. *Choice of the extrajudicial penal procedure*

When just causes oppose the celebration of the judicial process and the extra-judicial path is chosen (cf. n. 59), it is the Ordinary who

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201. Can. 1341 - The Ordinary must start a judicial or an administrative procedure for the imposition or the declaration of penalties when he perceives that neither by the methods of pastoral care, especially fraternal correction, nor by a warning or correction, can justice be sufficiently restored, the offender reformed, and the scandal repaired.

202. Can. 1720 - If the ordinary thinks that the matter must proceed by way of extrajudicial decree: 1º he is to inform the accused of the accusation and the proofs, giving an opportunity for self-defense, unless the accused neglected to appear after being properly summoned; 2º he is to weigh carefully all the proofs and arguments with two assessors; 3º if the delict is certainly established and a criminal action is not extinguished, he is to issue a decree according to the norm of cans. 1342-1350, setting forth the reasons in law and in fact at least briefly.

must take the initiative, implementing with executive power the administrative penal procedure of canon 1720, which will conclude with a singular decree (cf. cans. 48 ff.) of acquittal or condemnation (cf. n. 221).

The aforementioned can. 1720 regulates the procedure only in its essential phases and allows the Ordinary to choose the concrete way of acting for the rest. Since the *CIC* regulates the penal process more explicitly (cans. 1721 ff.) and the ordinary process (whose norms also apply to penal procedure according to can. 1728), these procedural norms can also serve as guidelines (cf. canon 19) to proceed appropriately in the aspects in which can. 1720 does not provide details, even if they are not obligatory norms for the extrajudicial penal procedure.

The fundamental characteristics of this way of proceeding, which follows the logic of the penal action in the Church and protects the right of defence (cf. cans. 212 §3, 1720, 1°), are illustrated in the following paragraphs.

203. *Appointment of the Instructor, of the Assessors and of the Notary*

The Ordinary, if he deems it appropriate, can personally instruct the penal case. However, as a rule, he entrusts this task to an Instructor, with the possible help of Notaries or Adjunct Instructors, in more complex cases. It is advisable that these appointments be made by Decree (cf. Appendix 8). The instructor delegates the task of carrying

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203. Cf. *Vademecum* DDF, nn. 95-96.

Can. 1424 - In any trial, a single judge can employ two assessors who consult with him; they are to be clerics or lay persons of upright life.

Can. 1448 - §1. A judge is not to undertake the adjudication of a case in which the judge is involved by reason of consanguinity or affinity in any degree of the direct line and up to the fourth degree of the collateral line or by reason of trusteeship, guardianship, close acquaintance, great animosity, the making of a profit, or the avoidance of a loss.

§2. In these circumstances the promoter of justice, the defender of the bond, the assessor, and the auditor must abstain from their office.

out the knowledge of the cause, receiving the attachments and evidence, and preparing the entire documentation for the judgement. Upon completion of his activities, the Instructor draws up his opinion in writing and combines it with the prepared material.

Before the Instructor finishes his work, the Ordinary must choose and appoint with a special Decree two Assessors who, together with the Ordinary, will evaluate the documentation collected in the instruction and will offer the Ordinary their opinion on the merits of the cause, on the culpability of the accused and on the possible penalty to be inflicted.

For the choice of the Instructor and the Assessors, the Ordinary will take into account the criteria indicated in cans. 1424 and 1448 §1 *CIC*.

Furthermore, it is also necessary to appoint a Notary according to the indications of can. 483 §2 *CIC*, in order to guarantee the public faith of the documents he drafted, according to can. 1437 §2 *CIC*.

All these persons who intervene as officials in the penal procedure will have to take an oath, which must be confirmed in the documents of the case, to faithfully carry out the assignment received and to observe the secrecy of the office.

204. *Summons and first appearance of the accused*

The extrajudicial penal procedure begins by citing the subject to whom the accusation is communicated (always with the intervention of the notary), i.e., with precision the delict of which he is accused, and the indication of the evidence due to which it was decided to proceed (can. 1720, 1°); the right that the subject has to defend himself against the accusations must also be underlined.

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204. Can. 1723 - §1. The judge who cites the accused must invite the accused to appoint an advocate according to the norm of can. 1481, §1 within the time limit set by the judge.

§2. If the accused does not make provision, the judge is to appoint an advocate before the joinder of the issue; this advocate will remain in this function as long as the accused does not appoint an advocate personally.

To this end, the Ordinary must issue a decree summoning the accused (Appendix 12), which must contain: 1° clear indication of the person summoned, 2° place and time in which he must appear, 3° purpose for which he is summoned, briefly recalling the content of the indictment, 4° very clear expression of opportunity to exercise the right of defence.

In fact, when the accused is summoned to appear, he must always be informed that, if he so wishes, he can appear assisted by a trusted lawyer chosen by him. During the audience, he will be asked to name him in order to prepare his defence of him and, if he does not do so, he will be appointed *ex officio* (see cans. 1723 and 1481-1490 for guidance; cf. Appendix 10).

In this phase of the procedure, some rules foreseen for the mandate to appear in the process can serve as a guide (cf. cans. 1507-1512).

205. *Possible absence of the accused*

If the accused refuses or fail to appear, the Ordinary (or his Delegate) will evaluate whether to make a second summons. Both in the first and second summons, the accused will be warned, so that it can

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205. Cf. *Vademecum* DDF, nn. 99-100. Can. 1592 - §1. If the cited respondent has neither appeared nor given a suitable excuse for being absent or has not responded according to the norm of can. 1507, §1, the judge, having observed what is required, is to declare the respondent absent from the trial and decree that the case is to proceed to the definitive sentence and its execution.

§2. Before issuing the decree mentioned in §1, the judge must be certain that a legitimately executed citation has reached the respondent within the useful time, even by issuing a new citation if necessary.

Can. 1593 - §1. If the respondent appears at the trial later or responds before a decision in the case, the respondent can offer conclusions and proofs, without prejudice to the prescript of can. 1600; the judge, however, is to take care that the trial is not prolonged intentionally through longer and unnecessary delays.

§2. Even if the respondent did not appear or respond before a decision in the case, the respondent can use challenges against the sentence; if the respondent proves that there was a legitimate impediment for being detained and there was no personal fault in its not being made known beforehand, the respondent can use a complaint of nullity.

be seen in the records that the trial will go ahead in any case, even in his absence (nn. 99-100).

If the duly cited accused does not appear (cf. can. 1720, 1°), the Ordinary, after having carried out the necessary checks (cf. can. 1592), can ask the notary to publish the report of the absence, and can issue a decree declaring the accused absent from the proceedings.

In such circumstances, the Ordinary can continue the process up to the final decree (cf. can. 1720). However, if the accused appears during the proceedings and before its completion, and wants to exercise his right of defence, the Ordinary has the obligation to admit it (cf. can. 1593).

206. *Precautionary measures at this stage of the procedure*

Considering the purposes foreseen by can. 1722, if it has not been done before, and it becomes necessary on the basis of the circumstances, the Ordinary can adopt the appropriate precautionary measures at this time.

Precautionary measures may be included in the summons, or in a separate Decree, which may be served on the offender at that time or at another, in accordance with cans. 54-56 (see Appendix 9). The above measures may also be communicated orally to the offender at the same hearing, but care should be taken to ensure that they are immediately recorded in the minutes. If disciplinary measures have been taken during the investigation (cf. nn. 191-192), it will be necessary at this point to decide whether to keep or modify them as precautionary measures under Can. 1722.

The extrajudicial penal procedure does not involve the Promoter of Justice, since the Ordinary is the guarantor of the public good, but

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206. Can. 1722 - To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases.

it may be useful for him to consult on the basis of can. 1722 with the two assessors who advise him in the procedure (cf. can. 1720, 2°).

207. *Appearance of the accused and notification of charges*

Once the day and time of the session for notifying the allegations and evidence has arrived, the accused and any lawyer assisting him are shown the file of the preliminary investigation documents. This notification has the purpose of giving the accused the opportunity to defend himself: it is therefore necessary to make him aware of all the data necessary for him to be able to defend himself effectively (cf. Can. 1720, 1° *CIC*).

If the case involves the sacrament of Penance in some way, particular attention must be paid to compliance with art. 4 §2 NSST, which provides that the name of the alleged victim/complainant is not disclosed to the accused, unless she has expressly consented to reveal it.

It is not necessary for the Assessors to take part in the session for the notification of the accusations, carried out by the Ordinary or by his Delegate (cf. n. 203).

Lastly, it is advisable to disclose the obligation to respect professional secrecy.

208. *Notions of accusation and proof*

By "accusation" is meant the delict which, according to what has emerged during the prior investigation, is believed to have been committed by the accused, as also indicated in the already cited Vademecum of the Doctrine of the Faith. Presenting the accusation therefore means making known to the accused the crime attributed to him/her, together with the elements to identify it (for example, place where it allegedly took place, any names of presumed victims, circumstances), as well as the mode of participation (author or accomplice) and any aggravating or mitigating circumstances, etc.

By "evidence" is meant the set of material collected during the preliminary investigation and other material possibly acquired: first, the

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207. Cf. *Vademecum* DDF, nn. 101-104.

208. Cf. *Vademecum* DDF, nn. 105-106.

verbalization of the allegations made by alleged victims or complainants; then the pertinent documents (medical records, exchanges of letters, including electronically, photographs, proof of purchase, bank account statements, etc.); the minutes of the statements of any witnesses; and, finally, any expert reports that the person conducting the investigation has deemed appropriate to accept or have carried out. In fact, despite having been collected in a phase prior to the trial, these data will normally become probative material when the extrajudicial trial is opened.

It will also be necessary to observe the rules of confidentiality, possibly imposed by civil law.

209. *Faculties and rights of the accused in the disciplinary procedure*

It should be carefully kept in mind that, according to can. 1728 §2, the accused is not required to confess the delict, nor can he be sworn to tell the truth. In fact, he should not be forced to give testimony against himself that could incriminate him. However, he must be heard and, his statements will be suitably evaluated by the Authority.

The accused must always be treated with respect, as it is not permissible to manipulate him or to try to extract from him, in an apparently informal or friendly manner, statements that may be used against him in order to indict him. In particular, it would be unlawful to provoke or accept in proceedings "declarations of conscience" that the accused actually intended to make exclusively in confidence by reporting to certain persons (e.g., his Superior), not only because this

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209. Cf. *Vademecum* DDF, n. 110. Can. 1728 - §1. Without prejudice to the prescripts of the canons of this title and unless the nature of the matter precludes it, the canons on trials in general and on the ordinary contentious trial must be applied in a penal trial; the special norms for cases which pertain to the public good are also to be observed.

§2. The accused is not bound to confess the delict nor can an oath be administered to the accused.

Can. 1725 - In the discussion of the case, whether done in written or oral form, the accused, either personally or through the advocate or procurator, always has the right to write or speak last.

would be a clear breach of justice, but also because such spontaneous expressions are usually made without the care required to assess actions and conduct in criminal proceedings.

Moreover, the accused must always have the faculty to intervene last, both in written and oral form, and this also on the occasion of any new elements, testimonies or proofs, which are added to the procedural acts, as prescribed by can. 1725: in any case, the accused or, in his place, his lawyer must express his opinion last.

210. *How to act if the accused claims to have been acquitted in the internal forum*

If the delict for which a person is being judged involves a *latae sententiae* censure, it may happen that the subject has already confessed it in the Sacrament of Penance and that, with the mediation of the confessor, he has been acquitted in the internal forum through the intervention of the Apostolic Penitentiary, which is the Dicastery competent to remit the censures reserved to the Holy See in this forum.

In such cases, the censure has effectively been remitted to the offender, but whoever judges him is not able to know it and, therefore, this is a possibility that the Ordinary must ignore unless the accused raises it spontaneously.

Should this happen, and the offender confesses the delict of which he is accused, he himself will have to prove that the censure has been remitted to the internal forum, so that this can have full juridical effects also in the external forum. This is possible because, in the case of absolutions granted anonymously by the Apostolic Penitentiary, the Dicastery sends the penitent, through the confessor, the protocol number of the absolution decree so that it can be shown, precisely in the event that the criminal facts forgiven appear later in the external

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210. Can. 130 - Of itself, the power of governance is exercised for the external forum; sometimes, however, it is exercised for the internal forum alone, so that the effects which its exercise is meant to have for the external forum are not recognized there, except insofar as the law establishes it in determined cases.

forum to be judged. In such circumstances, whoever initiates the penal case must contact the Apostolic Penitentiary and verify whether the protocol number indicated corresponds to the delict of which the subject is accused; naturally, no name will appear, since the entire procedure in the internal forum is anonymous.

In the affirmative case, having ascertained the absolution, the investigator will have to certify that the subject has been juridically absolved from the *latae sententiae* censure and will have to evaluate, according to what is established by can. 1335 §1 (cf. n. 41), the opportunity to impose another type of canonical sanction, such as, for example, an expiatory penalty (cf. nn. 43 ff.) or a penal remedy (cf. nn. 52 ff.).

211. *Determining the deadline for preparing the defence*

Once everything necessary has been communicated to the interested party, and the appropriate declarations made, the Ordinary will give the offender a reasonable period of time, usually short, unless there are circumstances suggesting the contrary, to prepare his defence with the assistance of his lawyer (cf. can. 1720, 1°).

He can also determine that a new investigation be conducted, if necessary, to complete the prosecution's evidence. This first appearance to communicate the indictment concludes with the signing of the minutes by the notary, the Ordinary and the defendant. It will also be necessary to inform the accused of any changes incorporated in the documents (cf. n. 209).

212. *Preparation and presentation of the defence*

The defence of the accused can mainly take place in two ways: 1° in the simplest cases it may be possible to collect, on the spot, on the

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211. Cf. *Vademecum* DDF, n. 109.

212. Cf. *Vademecum* DDF, nn. 109-114. Can. 1527 - §1. Proofs of any kind which seem useful for adjudicating the case and are licit can be brought forward.

§2. If a party insists that a proof rejected by a judge be accepted, the judge is to decide the matter as promptly as possible (*expeditissime*).

indicated day, all the statements or attachments that the accused intends to make, gathering them in a special report signed by all present (mainly, the accused and his lawyer and the instructor and the notary); 2° in other more complex cases, after giving the accused a reasonable time established by the instructor, it will be necessary to present the instructor with a written defence in one or more sessions, with a possible indication of the evidence to be produced, which will require subsequent hearings to illustrate what is presented.

In support of its positions, the defence of the accused can make use of all lawful means. Consequently, he can request that certain witnesses be heard (see Appendixes 13-14) and can produce the documents and expert reports he deems useful. However, as indicated in a general way by can. 1527 for the trial, in this case it is up to the instructor to evaluate whether to admit evidence proposed by the defence or not, according to their usefulness for the definition of the case.

213. *Further evidence*

At any stage of the process, it is licit for the Ordinary or his Delegate to order the collection of further evidence or the hearing of new witnesses, if it seems appropriate to them on the basis of what results from the preliminary investigation (cf. Appendix 15). This can also happen on the basis of the defendant's requests in the defence phase. The results will obviously be presented to the accused during the course of it: he must always be aware of all the further evidence or testimony, in order to be able to duly exercise the right of defence. At this point, he will be presented with what has been gathered as a result of the defence petitions, calling for a new session to challenge the charges and evidence if new charges or evidence have been found; otherwise, this material can simply be considered an integral element of the defence.

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213. Cf. *Vademecum* DDF, n. 108.

214. *Information to the complainants on the progress of the case*

Since it is a penal procedure, the intervention of any complainants or third parties in the procedural phase is not foreseen, since whoever has reported has already exercised his right by contributing to the initiation of the accusation and the collection of evidence, a procedure that is brought *ex officio* by the Ordinary or by his Delegate.

VI. Conclusion of the extrajudicial penal procedure

215. *Evaluation of the results of preliminary investigation and of the defence of the accused*

Once the appropriate appearances and proceedings have been completed, the Instructor presents the entire case together with his evaluations to the Ordinary.

Once this documentation has been collected, the Ordinary must carefully evaluate together with the two Assessors the accusations made against the subject and the proofs that support them, as well as the proofs and defence arguments put forward by the accused himself presented in the procedure (can. 1720, 2°). Consequently, he will provide the Assessors with the entire procedural file, allowing them adequate time for study and personal evaluation, inviting them by decree to provide, normally in writing (even if it is not required *ad validatatem* by law) and within a certain reasonable term, their evaluation of the proofs and testimonies and of the defence arguments (cf. Appendix 17), referred to in can. 1720, 2nd *CIC*. It is good to remind them of the obligation to observe professional secrecy.

In this decree he can also schedule a common session, in which to carry out this evaluation, in order to facilitate the analysis, discussion and comparison (see Appendix 16). For this session, which even though optional is recommended, no particular legal formalities are foreseen. If the evaluation of the evidence and defence arguments takes place during a common session, it is advisable to take a series of

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214. Cf. *Vademecum* DDF, n. 114.

215. Cf. *Vademecum* DDF, n.115-118.

notes on the speeches and on the discussion, also in the form of minutes signed by the participants, which in any case fall under professional secrecy and must not be widespread.

However, the Assessors do not form a sort of collegiate tribunal with the Ordinary but are simple consultants in the decision adopted by the Ordinary himself.

Although it is not provided for by the law, it is advisable that the assessors' opinion be drawn up in writing, to facilitate the drafting of the subsequent final decree by the competent Authority.

216. *On the way to arrive at a decision*

The evaluation of the elements of the case, and the advice of the two Assessors (cf. n. 203), must lead the Ordinary or his Delegate to decide on the culpability or otherwise of the alleged offender, based on the acts of the procedure themselves. In fact, since it is an extrajudicial process, it is particularly necessary that the Ordinary or his Delegate maintain a decisive attitude of independent judgment with respect to any previous elements and circumstances of their knowledge relating to the subject which, however, are not present in the deeds: he, like the judge, must act *ex actis et probatis* (cf. cans. 1342 §1, 1608).

At this moment it will be necessary to keep in mind, above all, what is established by can. 1321 §1 regarding the presumption of innocence of the accused (cf. n. 17), which can only be refuted in the face of certain proofs to the contrary provided during the procedure.

Furthermore, if at any time during the proceedings it should become 'evident that the crime was not committed by the accused', the

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216. Can. 1608 - §1. For the pronouncement of any sentence, the judge must have moral certitude about the matter to be decided by the sentence.

§2. The judge must derive this certitude from the acts and the proofs.

§3. The judge, however, must appraise the proofs according to the judge's own conscience, without prejudice to the prescripts of law concerning the efficacy of certain proofs.

§4. A judge who was not able to arrive at this certitude is to pronounce that the right of the petitioner is not established and is to dismiss the respondent as absolved, unless it concerns a case which has the favor of law, in which case the judge must pronounce for that.

Ordinary must clearly declare this by means of a decree absolving the accused, and the same must happen if 'the extinction of the criminal action' (cf. can. 1726). 1726). In the same decree, the Authority must, as a matter of strict duty of justice, ensure that any precautionary measures taken in the previous phases cease immediately both *de facto* and formally; it will also be necessary to repair any damage to the good reputation of the subject that may have been caused by these measures.

The criteria given in cans. 1526-1586 on the evaluation of evidence in judicial proceedings also serve as a guide for criminal administrative procedure.

The Ordinary, or his Delegate, shall take into consideration the evidence and testimonies presented, carefully discerning the credibility of the witnesses involved, including through cross-examination. This attestation of credibility is of mandatory in cases where the sacrament of Penance is involved in the testimony of the complainant.

Once the facts have been ascertained, the degree of penal responsibility of the accused will also have to be assessed. In this regard, starting from the general principles relating to imputability (cf. n. 19), the degree of it in the present case will have to be assessed, on the basis of the exempting c (cf. nn. 20-22), mitigating (cf. nn. 23-25) or aggravating circumstances (cf. nn. 27-28), as well as the remaining circumstances of ignorance (cf. n. 26), correctness (cf. n. 31) etc.

The evaluation of this set of elements, required by can. 1720, 3°, must serve to form a precise idea about the circumstances of the delict and about the culpability of the accused.

A serious assessment is also needed on the determination of the penalty to be imposed if culpability is established and a penalty must be imposed.

217. *The need to reach moral certainty before deciding*

Can. 1342 §3 requires that the Ordinary, before issuing a penal decree against a subject, must achieve the same moral certainty about the culpability of the offender that is required of every judge by Canon 1608. To understand what is meant by "moral certainty", reference must be made to article 247 §2 of the Instruction *Dignitas connubii*. If, on the other hand, this moral certainty is not achieved, or if the innocence of the accused is considered proven (cf. can. 1726), the Ordinary must issue a motivated decree of acquittal. In such a case, if the circumstances suggest and allow it, it will be possible to impose on the subject the penal remedies and penances provided by law (cf. n. 52-56).

218. *Concerning the advisability of using the pastoral faculties given to the Ordinary*

Once the procedure has been concluded and the set of circumstances which contribute to the delict has been evaluated and finally the Ordinary has attained moral certainty regarding the culpability of the offender, when the circumstances suggest and allow it (because the norm sets objective requirements), the Ordinary can use the faculties granted to the judge by cans. 1343 ff. relating to the application of canonical penalties.

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217. Cf. *Vademecum* DDF, nn. 84, 119, 125. In order to achieve the moral certainty required by law, it is not sufficient that evidence and clues prevail, but it is necessary that any positive prudential doubt of error, whether in law or in fact, be entirely excluded, even if the mere possibility to the contrary is not ruled out" [Article 247 §2, Instruction *Dignitas Connubii*, of 25 January 2005, of the then Pontifical Council for Legislative Texts, in *Communicationes* 37 (2005), pp. 11-92]; Article 12 *Procedural Rules for the Treatment of Matrimonial Nullity Cases* of 15 August 2015.

218. Can. 1343 - If a law or precept grants the judge the faculty to apply or not to apply a penalty, he is, without prejudice to the provision of can. 1326 §3, to determine the matter according to his own conscience and prudence, and in accordance with what the restoration of justice, the reform of the offender and the repair of scandal require; in such cases the judge may also, if appropriate, modify the penalty or in its place impose a penance.

In particular, taking into account these circumstances, he will have to evaluate what to choose in the case of optional penalties (cf. n. 60); he will also be able to evaluate the possibility of deferring, reducing or suspending the application of the penalty (cf. n. 61) or even not imposing any penalty, provided that the circumstances allow it (cf. n. 62). In the same way, at this moment it will be necessary to choose the appropriate penalty for the delict, if it is not determined by the law (cf. n. 66) and, in particular, to weigh up the most appropriate way to provide for the needs of the convict, whether it is a cleric (cf. n. 67), or a layman, above all in the case in which the latter is dependent on a family nucleus.

219. *On the choice of the specific penalty to be imposed*

Having ascertained the criminal facts and having assessed the degree of culpability of the offender, the Ordinary will have to identify which is the right sanction to impose and indicate the period of time in which the subject will be bound by the sanction imposed (cf. n. 68). In fact, there is an obligation to impose a penal sanction that is proportionate, in type and degree, to the gravity of the concrete criminal act being judged (cf. n. 66).

Unless a precise punishment is indicated for the delict specifically judged, the Ordinary must identify the penalty among the expiatory ones indicated in can. 1336 (see nn. 44-48), modulating the duration of the sentence according to the gravity of the facts and the circumstances that emerged. He will proceed in the same way if a canonical censure is foreseen for the type of delict.

In all these evaluations, the Ordinary must also take into account the need to adapt to the criteria and choices that other Ordinaries have made in similar circumstances (cf. n. 10).

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219. Cf. *Vademecum* DDF, nn. 120-121.

220. *How to act when there is a need to declare a censure*

When the law provides for a *latae sententiae* censure for the delict judged, and when the offender has not spontaneously confessed the fact of having been absolved in the internal forum (cf. n. 210), the Ordinary shall proceed in his Decree to declare the censure provided for by law, which the offender had incurred *ipso iure*.

In this case, however, since the medicinal nature of the censure will require its remission from the moment in which the offender's amends (see n.76) and sufficient reparation from the scandal result, the Ordinary can proceed according to what is indicated in can. 1335 §1, imposing other expiatory penalties deemed necessary to restore justice or repair the scandal (cf. n. 41).

221. *The penal decree: form and content*

Once moral certainty regarding culpability has been reached if the penal action has not been extinguished (cf. nn. 82-84), the Ordinary must issue a penal decree (cf. can. 1720, 3°; Appendix 19) for the closure of the process, imposing the penalty, the penal remedy, or the penance that he deems most appropriate for the reparation of the scandal, the reparation of justice and the amendment of the offender (cf. n. 4). If the penal action is extinguished, this will be declared by decree as soon as the extinction is established.

As regards the form of the decree, the general norms on singular decrees must be observed (cans. 35-58). That is to say, it must be drawn up with a logical scheme similar to that of a sentence of the tribunal (cf. cans. 1608 ff.), highlighting above all the reasoning developed, rather than concentrating on terminological technicalities: on this topic they can be orientation, adapting them to the circumstances, in particular cans. 1608, 1611 and 1612. Possibly, for the drafting of the decree, it will be advisable to make use of the help of competent persons.

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220. Can. 1335 - §1. If the competent authority imposes or declares a censure in a judicial process or by an extra-judicial decree, it can also impose the expiatory penalties it considers necessary to restore justice or repair scandal.

221. Cf. *Vademecum* DDF, nn. 112-126.

In this sense, the penal decree must briefly mention the main elements of the accusation and of the unfolding of the process, exposing, at least concisely, the reasons on which the decision is based, in law and in fact (can. 51).

As required by the law, the penal decree must list the canons on which the decision is based: the canons defining the delict(s) judged, those defining any mitigating, exempting or aggravating factors taken into consideration, setting out in an essential manner the legal logic that led to the decision to apply them.

The penal decree must then set out the factual grounds, which require greater elaboration and accuracy, because in them the author of the decree must set out the reasons on the basis of which, by comparing the material of the prosecution and the defence, which he must briefly account for in the statement, he came to the conclusion that he was certain that the crime had been committed or not committed, or that he was not sufficiently morally certain.

The decree in question is a personal act of the Ordinary or his Delegate, and therefore does not have to be signed by the Assessors, but only authenticated by the Notary.

222. *Notification of the penal decree with indication of possible appeals*

The criminal decree is served on the offender in accordance with cans. 55-56 (see Appendix 20). It must be served in its entirety, and not only the dispositive part, thus respecting the offender's right of appeal.

It must also explain what appeals may be lodged (cf. Canon 1614). In particular, the possibility of an appeal against this decree and the time limit for lodging it should be mentioned (cf. can. 1732-1739). Since this is not one of the cases envisaged by can. 1734 §3, 1° (except when the decree was given by an Ordinary dependent on the diocesan bishop, in which case recourse is made to the latter), it is also necessary, before making an appeal, to request in writing the revocation or

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222. Cf. *Vademecum* DDF, n. 141.

modification as indicated in can. 1734 §1. Both this request and the subsequent appeal suspend the decree (cf. can. 1353, 1736 §1).

223. *On the appeal against the penal decree*

According to can. 1734, whoever intends to present an appeal against a penal decree must first ask the author (the Ordinary or his Delegate) to revoke or modify the decree itself. The offender has the right to exercise this right within the peremptory term (that is, otherwise, this right expires) of ten days (*tempus utile*) from the legitimate notification.

In turn, according to can. 1735, the author of the penal decree can respond within thirty days, from the moment in which he has received the request, modifying his own decree, or rejecting the request. The author of the decree is obliged to respond (cf. can. 57 §3), and if he does not respond, a negative response is presumed *ipso iure* due to

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223. Cf. *Vademecum* DDF, nn. 151-154. Can. 1734 - §1. Before proposing recourse a person must seek the revocation or emendation of the decree in writing from its author. When this petition is proposed, by that very fact suspension of the execution of the decree is also understood to be requested.

§2. The petition must be made within the peremptory period of ten useful days from the legitimate notification of the decree.

§3. The norms of §§1 and 2 are not valid: 1º for recourse proposed to a bishop against decrees issued by authorities subject to him; 2º for recourse proposed against a decree which decides a hierarchical recourse unless the bishop gave the decision; 3º for recourse proposed according to the norm of cans. 57 and 1735.

Can. 1737 - §1. A person who claims to have been aggrieved by a decree can make recourse for any just reason to the hierarchical superior of the one who issued the decree. The recourse can be proposed before the author of the decree who must transmit it immediately to the competent hierarchical superior.

§2. Recourse must be proposed within the peremptory time limit of fifteen useful days which in the cases mentioned in can. 1734, §3 run from the day on which the decree was communicated; in other cases, however, they run according to the norm of can. 1735.

§3. Nevertheless, even in cases in which recourse does not suspend the execution of the decree by the law itself and suspension has not been decreed according to the norm of can. 1736, §2, the superior can order the execution to be suspended for a grave cause, yet cautiously so that the salvation of souls suffers no harm.

the administrative silence that automatically indicates rejection at the expiry of that period.

Eventually, the plaintiff may appeal to the competent Dicastery of the Holy See directly or through the author of the decree against the decree modified by the Authority, the rejection of the request or the silence of the author, (cf. can. 1737 §1). He can do so within the peremptory time limit of 15 days as indicated in by can. 1737 §2. The appellant, in presenting the appeal, can always make use of a lawyer or procurator.

When the recourse has been presented to the author of the decree, he must immediately transmit it to the Holy See (cf. can. 1737 §1 *CIC*). After that, the author of the decree must only wait for any instructions or requests from the Holy See, which will inform him about the outcome of the examination of the appeal. Against the decision of the competent Dicastery it is possible to forward an appeal to the Apostolic Signatura.

Similarly, to what is indicated for the penal process by can. 1727, the offender is free to appeal even in the case in which the decree of the Ordinary has acquitted him "only because the penalty was optional, or the judge made use of the powers mentioned in cans. 1344-1345".

Appendix 1

Example of a Decree initiating the preliminary investigation.
(Can. 1720, n. 1)

NN
Bishop of XX
Prot. No. ... / ...

Having received information that Rev. Fr. NN, a priest of the Diocese of XX, is being attributed conduct that could constitute a canonical delict;

not being able to exclude with moral certainty the verisimilitude of the facts charged against the aforementioned priest;

in order to ascertain the verisimilitude of the accusation and the imputability of the priest; following can. 1717

I ORDER

The opening of a preliminary investigation, instructing Rev. Fr. ZZ, assisted by a Notary in the name of Rev. Fr. YY, to carry out a preliminary investigation following can. 1717, and to give me prompt feedback in a short time, keeping me punctually informed of developments regarding this case.

Place and date

+NN
Bishop

The Episcopal Chancellor
NN

Appendix 2

Sample Decree of entrustment of the preliminary investigation and appointment of delegate and notary

NN
Bishop of XX
Prot. No. ... / ...

On date ... /... /..., in the course of a confidential conversation with XX, I received a specific report about an alleged criminal behavior of Rev. Fr. NN, a member of the diocesan clergy of XX. The priest in question is currently a parochial vicar at the parish XX in XX. He allegedly committed the following actions: ... [description of case].

Now,

- considering the reliability of the report, which configures a *notitia criminis verisimilis* following can. 1717, [as similar rumors had been received on Rev. Fr. NN's account];

- considering that the case could fall within the prevision of can. 1385 and likewise of art. 4 §1, 4° of the *Normae in materia di delicta graviora contra mores*, promulgated by His Holiness John Paul II in the Motu proprio of *Sacramentorum sanctitatis tutela* on April 30, 2001, as revised by the Congregation for the Doctrine of the Faith on October 11, 2021, and as such should be referred to the judgment of the Dicastery for the Doctrine of the Faith;

- in compliance with my duty as Ordinary of the Diocese of XX to urge the observance of canonical laws in order to protect ecclesiastical discipline and the good of the faithful, as well as the specific provisions of Article 16 of the same *Normae in materia di delicta graviora contra mores*;

- availing myself of the faculty to inquire *per aliam idoneam personam* into what happened, by virtue of can. 1717;

I APPOINT

Rev. Fr. ZZ, in charge of the preliminary investigation regarding the *notitia criminis* mentioned above, in accordance with can. 1717

and Article 10 of the *Normae in materia di delicta graviora contra mores*. I also appoint Rev. Fr. YY Notary who will equally serve as Actuary in the same proceedings.

Place and date

+NN
Bishop

The Episcopal Chancellor
NN

Appendix 3

Example of Decree of Imposition
of disciplinary measures during the preliminary investigation

NN
Bishop of XX
Prot. No. ... / ...
To Rev. Fr. NN

Dear Fr. NN,

I hereby follow up on our meeting last ... /... /... in which I informed you of the content of the complaints that have reached me regarding the asset management of the parish and the parish high school.

Taking into account the nature of the allegations, it was my duty — as I told you — to initiate a preliminary investigation, according to what is indicated in can. 1717, in order to safeguard the interest of the persons involved as well as the parish and diocesan community.

For the same reason I now deem, on the basis of the prerogatives granted to me by canons 391-392, to suspend you until my further disposition from any assignment or management of an economic nature and of the administration of the goods of both the Parish RR and of the high school. I have instructed the Rev. Fr. ZZ to assume these roles, reporting directly to the Diocesan Treasurer, and keeping the Parish Council for Economic Affairs and the Board of Administration of the high school informed.

I would like to point out that these measures do not represent a judgment about your behavior, nor are they taken in the context of a penal trial. It is, rather, a disciplinary measure that I believe I must take as a means of precaution based on the totality of the present circumstances.

Renewing for my part the confidence I have always shown in you, and confident that you will understand the initiative I have had to take, I greet you fraternally, sending you my blessing.

Place and date

+NN
Bishop

The Episcopal Chancellor
NN

Appendix 4

Example of an Act of Admonition or Reprimand
(Can. 1339 §3)

NN
Bishop of XX
Prot. No. ... / ...

Today, in the presence of Rev. Fr. AA, Chancellor of this Diocese, I admonished Rev. Fr. NN for the second time about the habitual use in his parish of XX of the C rite of the *Ordo Poenitentiae* of December 2, 1973, in the celebration of the Sacrament of Penance, failing, moreover, to inform the faithful about their duty to confess their sins in any case in a subsequent confession, as provided for in Rites A or B.

As I said several times to Rev. Fr. NN, it is not up to the individual priest to assess the gravity of the circumstances to employ such a C rite. It belongs to the diocesan bishop to judge whether the conditions required for the use of such a rite are present (Can. 961 § 2). But then, the Bishops' Conference has given clear indications in this regard about the non-existence in our country of the circumstances that permit the use of the C rite.

I also reminded Rev. Fr. NN of the need to devote his time to the faithful entrusted to him, remaining a good pastor at their disposal and welcoming individual penitents into the Sacrament of Forgiveness.

We tried to cordial and courteous during the meeting, although Rev. Fr. NN chose not to speak, maintaining silence almost the entire time, without giving any kind of explanation. The meeting lasted twenty minutes.

As evidence that this meeting was held following can. 1339 §3, together with the Chancellor of the Diocese, who was present during

the entire meeting, I sign this document, which is to be kept in the secret archives of the Curia.

Place and date

+NN
Bishop

Episcopal Chancellor
NN

Appendix 5

Example of a Penal Precept
(Can. 1339 §4)

NN
Bishop of XX
Prot. No. ... / ...
To Rev. Fr. NN

Dear NN,

I am following up on the various meetings we have had in recent months regarding the need to observe in your parish the legal prescriptions in force concerning the administration of the Sacrament of Penance and, specifically, the duty to follow only Rites A or B in this regard, as indicated in the *Ordo Poenitentiae* of December 2, 1973.

In our various meetings, I admonished repeatedly you about the need to observe the prescriptions given by the Church with regard to ensuring the adequate and fruitful administration of the Sacrament of Reconciliation. You, on the other hand, did not show any interest in listening, ignoring the fact that the gifts you have received through the Sacrament of Holy Orders are for the good of the community and, like all of us, you are obliged to administer them according to the Church's instructions.

As indicated by the Bishops' Conference and as I pointed out several times, there are no circumstances of grave necessity which, according to can. 961 §1, 2 would justify the use of rite C of the Sacrament. In situations of need, it is the Diocesan Bishop's responsibility to evaluate the gravity of any circumstances for the use of rite C, following the indications given by our Bishops' Conference (Can. 962 § 2)

Given that you refused to listen to me, I now find myself obliged to use the pastoral means conferred on me for the pastoral guidance of the diocesan community and, by this letter, I consider it my duty to apply to you a penal precept, following can. 1339 §4.

Consequently, by this letter that serves as a penal precept, I warn you not to celebrate the Sacrament of Penance according to rite C, in your parish or anywhere else. Failure to comply with this precept may lead to an *ipso iure* suspension of your ministerial licenses to Confess, reserving to myself the possibility of employing further measures if necessary.

Renewing the personal esteem I have always shown you, and expecting from you an obedient follow-up to this dutiful letter of mine, I greet you fraternally sending you my blessing.

Place and date

+NN
Bishop

The Episcopal Chancellor
NN

Appendix 6

Example of Decree of conclusion
of the preliminary investigation and dismissal of the case

NN
Bishop of XX
Prot. No. ... / ...

Following a specific report about an alleged criminal behaviour of Rev. Fr. XX, a member of the diocesan clergy of XX, I ordered by decree Prot. No. ... / ... of ... /... / ... the opening of a preliminary investigation following can. 1717, instructing Rev. Fr. ZZ to complete it.

It was a complaint of simony related to the reception of Sacraments, and this news was spread by some rumours in the parish community.

Having done the necessary research and after hearing from various witnesses, it was made clear that there had been a long-standing personal connection and friendship between the persons involved, and that the bequest was freely given by these individuals and was in no way connected with Rev. Fr. XX's ministerial activity.

Accordingly, fulfilling my duty as Ordinary of the Diocese of XX to urge the observance of canonical norms, as well as to protect ecclesiastical discipline and the good of the faithful, with special reference to the situation of the priest in question, I

as follows:

"The preliminary investigation regarding Rev. Fr. XX is closed, given that there is in the complaint filed against him no indication of the commission of a delict. I declare the case therefore closed."

Place and date

+NN
Bishop

NN
Notary

Appendix 7

Example of Decree
of initiation of the extrajudicial penal procedure

NN
Bishop of XX
Prot. No. ... / ...

Having received information that Rev. Fr. NN, a priest of the Diocese of XX, is being attributed behaviour that could constitute a canonical delict in accordance with canon XXX *CIC*, by Decree Prot. N. ... / ... of ... /... /..., I instructed the Rev. Fr. BB to carry out the appropriate preliminary investigations required by can. 1717.

At the conclusion of the aforementioned preliminary investigations, elements of verisimilitude were found regarding the commission of the delict indicated against Rev. Fr. NN, following can. 1342 §1. The initiation of a criminal judicial trial could have negative consequences on the progress of the process and on the order of the community. Moreover, it could damage the reputation of the accused. But given that moral certainty on the verisimilitude of the facts charged against Rev. Fr. NN cannot be excluded, I hereby

DECREE

The opening of an extrajudicial penal procedure against Rev. Fr. NN to ascertain the truth about the commission of the delict charged against him.

Accordingly, I appoint the Rev. Fr. CC Delegate to conduct the aforementioned penal procedure, and I also appoint the Rev. Fr. DD

and EE Assessors in the said case, reserving for myself, however, the issuance of the relevant final Decree upon its conclusion.

I also ask the Rev. Fr. CC to inform me of the progress of the case and its possible developments.

Place and date

+NN
Bishop

Notary
NN

Appendix 8

Example of Decree
of imposition of precautionary measures (Can. 1722)

+ NN Bishop of ...
Prot. No ... / ...

To the Most Rev. Fr. TT ...

I, the undersigned, +NN, Bishop of HH,

having regard to the results of the preliminary investigation which I have entrusted to the Rev. Fr. YY, in order to examine in depth the grounds for the report of a delict received by me against the Rev. Fr. TT ...,

Having regard to the beginning, by Decree Prot. No .../… of an extrajudicial penal procedure against Rev. Fr. TT

for the good of the Church of SS, in order to prevent scandals and ensure the course of justice, in accordance with the prerogatives granted to me by can. 1722 CIC, I hereby

DECREE

I order the Rev. Fr. TT to suspend teaching at the Theological Faculty of PP and to reside at the Monastery of AA; I also forbid him to take part publicly in the celebration of the Eucharistic Sacrifice.

The aforesaid prescriptions must be observed by the Rev. Fr. TT from the date of notification of the present decree until the end of the penal process in progress.

Place and date

+NN
Bishop

NN
Notary

Appendix 9

Example of Verbalization of First hearing
(Can. 1720, 1º)

Curia of the Diocese of XX
EXTRAJUDICIAL PENAL PROCEDURE

Prot. No. ... / ...
Rev. Fr. NN - Prot. No. ... / ...

On the day ... / ... / ..., at xx:xx hours, upon lawful summons, at the Diocesan Curia of XX, appeared before NN, Bishop of XX, and the undersigned Notary YY, the defendant Mr./Rev. AA (identity data), assisted by his lawyer SS (identity data), who duly confirm their respective identities.

Also present at the meeting are the two Assessors of the case appointed by the diocesan Bishop: Rev. Fr. BB and Rev. Fr. CC.

The defendant is informed in advance that, in accordance with can. 1728 §2, he is not required to take an oath at any time during the proceedings.

Thereafter, the defendant and his counsel are notified of the charges and the evidence on which they are believed to be based. (Normally, counsel will urge adequate time to study the documents exhibited, and a record of this request should be left in the Minutes.) The lawyer asks to be given time to study the documents and then to postpone the hearing to another date.

The Bishop, who presides over the hearing, grants the request and postpones the continuation of the case to a further hearing to be held at the same place on ... / ... / ..., at xx:xx. The undersigned Most. Rev. VV, having regard to the foregoing application, adjourns the case to a hearing to be held on ... / ... / ..., xx:xx hours.

At the same time, the Bishop of the diocese sets a time limit of 20 days for the defendant to deposit in the chancery any documentary material he deems useful for the trial, as well as any witnesses he may indicate.

The meeting is concluded at xx:xx, at which time these Minutes are signed by those present.

Read, confirmed, and signed

+ Signature of the Bishop
Signature of the Assessors
Signature of the Defendant
Signature of the Attorney
Signature of Notary Publi

Appendix 10

Example of Decree of Appointment of Lawyer of Office
(Can. 1720, 1º)

Curia of the Diocese of XX
EXTRAJUDICIAL PENAL PROCEDURE

Prot. No. ... / ...
Rev. NN - Prot. No. ... / ...

I, NN, the undersigned, appointed by the Bishop of XX as Delegate in the extrajudicial penal procedure against ZZ, having repeatedly solicited from the defendant the appointment of his own lawyer to accompany him along the penal procedure following can. 1481 §1 and having granted him by Decree Prot. No. ... / ... a period of fifteen days to indicate the name of a lawyer he trusts, in order to guarantee the right of defence and to ensure the normal course of the case, I deem it necessary to proceed in this matter *ex officio*.

Accordingly, for this

DECREE

given following can. 1723 §2

I NOMINATE

attorney YY as *ex officio* defence counsel in the case against NN, until such time as the defendant appoints counsel of his own.

Let this Decree be notified to the instances concerned.

Place and date

Signature of the Delegate
Signature of Notary Public

Appendix 11

Example of the verbalization of the interrogation of the accused
(Can. 1720, 1º)

Curia of the Diocese of XX
EXTRAJUDICIAL PENAL PROCEDURE

Prot. No. ... / ...
Rev. NN - Prot. No. ... / ...

On the day ... / ... / ..., at xx:xx hours, upon lawful summons, at the Diocesan Curia of XX, appeared before NN, Bishop of XX, and the undersigned Notary YY, the defendant Mr./Rev. Fr. AA (identity data), assisted by his lawyer SS (identity data), to proceed to the interrogation of the accused. Also present at the proceedings are the two Assessors of the case appointed by the diocesan Bishop: Fr BB and Fr CC.

Questions, prepared in advance, are directed to the defendant by the Bishop who presides over the act. The questions and answers are given below.

1st Question: ....
Answer:

2nd Question: ....
Answer:

3rd Question: ....
Answer:

Having prepared these Minutes, they are read publicly by the Notary Public, who asks the defendant for any changes in the text. At conclusion, these Minutes, are signed by those present.

The Hearing is taken away at xx: xx.

Place and date

+ Signature of the Bishop
Signature of the Assessors
Signature of the Defendant
Signature of the Counsel
Signature of Notary Public

Appendix 12

Example of a Decree to summon of the suspect for questioning

Prot. No. ... / ...

Rev. Fr. NN

Rev. Fr. NN

I, the undersigned, the Most Rev. XX, *de mandato Ordinarii*, invite you to appear on ... / ... / ..., at xx:xx, at the Office of the Chancery of Curia XX, in order to be heard regarding your assertions already made thus far, in the context of the extrajudicial penal procedure opened against you, by virtue of the Special Faculties granted to diocesan Ordinaries by the Circular Letter of the Congregation for the Clergy Prot. No. ... / ... of the day ... / ... / ..., by Decrees Prot. No. ... / ... of and ... / ..., respectively dated ... / ... / ... and ... / ... / ..., notified to you on ... / ... / ...

With the wish for all good things in Christ

Place and date

Delegate's signature
Bishop XX
Signature of Notary

Appendix 13

Example of Summons of a Witness

Registered letter
Prot. No. ... / ...

Dear Mr. XX

I, the undersigned, as the Judge in the proceeding XX, invite you to appear on ... / ... / ..., at xx:xx, at Office XX of this Curia XX, in order to be heard regarding .....

Should you be unable to appear on the scheduled date, please contact Rev. Fr. XX (tel. 00000), director of the said Office, as soon as possible.

Awaiting your kind reply, I wish you all the best in Christ

Place and date

Signature of the Judge
Signature of the Notary

Appendix 14

Example of Decree to summon witnesses

Curia of the Diocese of XX
Mr/Mrs. BB
Prot. No. ... / ...

As the extrajudicial penal procedure instituted against NN continues, it is deemed useful to hear again those persons who have already intervened during the preliminary investigation, for any clarifications and insights that may be necessary.

Therefore, as the Delegate Judge in the extrajudicial penal procedure against NN, I hereby request your cooperation in summoning the persons concerned and known to you, according to the days and times indicated. The venue for the depositions will be the Curia of XX.

I, therefore, ask you to propose the following times of appearance to the persons concerned and to give me kind written confirmation:

NN, on ... / ... / ... at xx:xx hours;
NN, on ... / ... / ... at xx:xx hours;
NN, on ... / ... / ... at xx:xx hours.
Place and date

Signature of the Judge
Signature of Notary Public

Appendix 15

Example of Decree setting
deadlines for presenting new evidence or witnesses

Curia of the Diocese of XX
EXTRAJUDICIAL PENAL PROCEDURE

Prot. No. ... / ...
NN - Prot. No. ... /…

I, the undersigned, Episcopal Delegate in the case against NN, considering that the defendant was given access to the acts of the preliminary investigation and those of the extrajudicial penal procedure;

considering that, on some specific points, the party has already testified during his deposition in these proceedings;

hereby

DECREE

establishes the time limit of thirty days from the notification of this Decree for NN, directly or through his patron, to indicate any new witnesses or to produce other evidence, as well as to submit a defence brief, if any, on his behalf;

finally, orders that this Decree be served on the defendant party through his patron.

Place and date

Signature of the Episcopal Delegate
Signature of the Notary

Appendix 16

Example of Decree of Closure of the criminal investigation and convening the Assessors for the decision of the case

Curia of the Diocese of XX
EXTRAJUDICIAL PENAL PROCEDURE

Prot. N. … / …

I, the undersigned Episcopal Delegate in the criminal case against NN, deem the case sufficiently instructed, in order to promote the economy of trial time and taking into account the availability reported by the Assessors;

hereby

DECREE

orders the closure of the preliminary investigation phase of the aforementioned case,

orders the transmission of the case documents to the Assessors;

agrees on the date of the day ..., of the month ..., of the year ..., for the discussion of the case with the aforementioned Assessors at the headquarters of the Diocesan Curia of XX.

Place and date

Signature of the episcopal delegate
Signature of the Notary

Appendix 17

Example of the Vote of an Assessor in a delict
of asset alienation without the necessary permission

Curia of the Diocese of XX
EXTRAJUDICIAL PENAL PROCEDURE

Prot. N. … / …

Lawsuit against Dr. NN, Administrator of the AA Foundation.

Vote of Assessor FF

Dr NN, administrator of the AA Foundation, with public canonical juridical personality, has been defendant by Mr. BB and Mrs. CC of having proceeded to the sale of a historical painting, of considerable value, property of the Foundation itself, without the knowledge of the Board of Directors of the Foundation itself and without the prior written consent of the Ordinary with the faculty granted, necessary *ad validitatem*, to carry out acts that exceed ordinary administration (cf. can. 1281 §1 as required by law and the Statutes of the AA Foundation.

The results of the preliminary investigation confirmed, in fact, that the relevant painting is no longer in its place, and administrative records indicate that indeed there has been a significant entry into the Foundation's assets, probably attributable to the sale of the said painting.

Accordingly, the Bishop of the diocese decided on ... /... /..., to initiate the extrajudicial penal procedure charging Dr. NN with the delicts set forth in can. 1376, §§ 1 and 2 for embezzlement and wrongful alienation of ecclesiastical property.

The defendant and his lawyer are timely notified of the charges, the evidence, and the contents of the concurring testimonies of Mr. BB and Mrs. EE.

Mr. DD, accountant of the AA Foundation, testified in his interrogation that he served as a go-between for the delivery of the painting

to the buyer, directly recording the amount of the transaction in the cash register.

In his cross-examination, the defendant Dr. NN proved through bank accounts that the entire sum of the sale was transferred to the Foundation's account, so the allegations of embezzlement of part of the agreed-upon money do not seem to have merit.

Dr. NN justified his course of action by believing that the sale was the way he considered most appropriate to balance the Foundation's financial situation, disagreeing with the alternative options that Mr. PP, Mrs. LL, also members of the Board of Directors suggested. Nevertheless, he did not provide any justification for the lack of consultation required to carry out acts of extraordinary administration.

Consequently, I find that Dr. NN is innocent with respect to the delict of embezzlement under can. 1376 §1, 1°, while, on the other hand, I find it sufficiently proven that he violated can. 1376 §1, 2°, by proceeding to alienate the painting without the permission of the AA Foundation Board of Directors and without the prior opinions required to carry out acts of extraordinary administration.

Accordingly, it is proposed that Dr. NN be sanctioned following can. 1376 §1, with the obligation of reparation and deprivation of the office of Administrator of the AA Foundation.

Place and date

Signature of the Assessor

Appendix 18

Example of Decree of acquittal
at the conclusion of the extrajudicial penal procedure

NN
Bishop of the Diocese of XX
Extrajudicial Penal Decree

Prot. No. ... / ...

In the name of the Lord. Amen.
In Dei nomine. Amen.
I, the undersigned Msgr. VV, Bishop of the Diocese of XX.
Facts

1. On (day) ... / ... / ... a complaint was made by Mr. BB about an alleged delict of wrongful alienation by Dr. NN, administrator of the Canonical Foundation AA, of a painting of high historical value without the due permissions of the Board of Directors of the said Foundation, nor the permission required in a preceptive manner by can. 1281 §1 to carry out acts of extraordinary administration, and with misappropriation of part of the sum received, incurring the delicts of can. 1376 §§1 and 2 *CIC*.

2. After preliminary investigation and, considering the repercussion of this news of this alleged incident on the diocesan community of XX, by decree of ... / ... / ... I appointed Rev. Fr. GG Delegate in accordance with can. 1717 to conduct the appropriate extrajudicial penal procedure against Dr. NN. The decision to proceed extrajudicially was motivated by the desire to prevent potential damage to the community that might have come as a result from a normal judicial process.

3. From the very first hearing, the accused, always accompanied by his lawyer, was informed of the charges against him and the testimonies and sales documents collected during the preliminary investi-

gation. Dr. NN declared his innocence and the legitimacy of his actions in managing the AA Foundation. He then asked for a reasonable amount of time in order to gather the necessary documentation on the sale of the painting and to present his witnesses. At the end of the 15 days granted, Dr. NN's lawyer presented various notarized documents, as well as a list of three names who in the following weeks were heard by my Delegate.

In iure

4. The AA Foundation is a canonical foundation with public legal personality erected by Decree of ... / ... / ... Prot. No. ... / ... Consequently, the assets of the AA Foundation are to be considered ecclesiastical patrimony in accordance with canon 1257 §1 and subject to the canonical patrimonial regime.

5. Can. 1281 §1 establishes the invalidity of acts of extraordinary administration carried out by the administrators without the prior written permission of the Ordinary, if they exceed the limit established by the respective Bishops' Conference.

6. Can. 1281 §2 defers to the Statutes the indication of acts exceeding the limits and modalities of ordinary administration

7. Can. 1376 §1 punishes the misappropriation of ecclesiastical property and can. 1376 § 2, similarly, punishes the carrying out of acts of extraordinary administration without carrying out the appropriate consultations prescribed by canon law.

In facto

8. All the probative elements, both against and exculpatory of the accused, were carefully considered both by the Delegate and by the two Assessors appointed by me for the cause.

9. From all this it appears that, contrary to what was initially believed and contrary to what was publicized in the press, the painting in question is not — as was believed — original, but rather a copy with reduced economic value. This is proven by the documentation and technical expertise exhibited by the accused, as well as by the testimonies heard, including that of the purchaser of the painting who

provided timely documentation of the sums paid, all of which were paid into the bank account of the AA Foundation.

10. The amount paid for the painting appears to be much less than the amount indicated by the Bishops' Conference to configure acts of extraordinary administration.

11. The Statutes of the AA Foundation explicitly allow the administrator to carry out acts of alienation that do not harm the Foundation and do not constitute acts of extraordinary administration.

Accordingly, I find it reasonably proven that the sale of the painting in question was lawful and was within Dr. NN's normal responsibilities as administrator of the AA Foundation. Therefore, I find that this implementation does not constitute the delicts for which he was charged and declare him innocent of the charges against him.

I further order that this decree be notified to the person concerned.

+VV
Bishop

CC
Notary

Appendix 19

Example of Sentencing Decree
at The Conclusion of the Extrajudicial Penal Procedure

NN
Bishop of The Diocese of XX
Extrajudicial Penal Decree

Prot. No. ... / ...

In The Name of the Lord. Amen.
In Dei Nomine. Amen.
I, The Undersigned Msgr. VV, Bishop of The Diocese of XX

PREMISE

Facts

1. On (day) ... / ... / ... a complaint is filed by Mr. BB about an alleged delict of undue alienation by Dr. NN, administrator of the Canonical Foundation AA, of a painting of high historical value without the due permissions of the Board of Directors of the said Foundation. It was also reported that Dr. NN did not see the preceptive permission required by can. 1281 to carry out acts of extraordinary administration. Allegation were also made about a misappropriation of part of the sum received (can. 1376 §§1 and 2). The news of this incident was leaked to the press, causing serious damage to the reputation of the defendant and scandal in the community.

2. Having carried out the preliminary investigation and following of can. 1717 and by decree Prot. No. ... / ..., I appointed Rev. Fr. ZZ Delegate to conduct an extrajudicial penal procedure against Dr. NN. The choice of this process over the judicial process was motivated by the need to maintain a certain privacy in the proceedings and avoid a publicity that could be prejudicial their outcome.

3. Summoned to the first hearing by Decree Prot. No. ... / ..., the accused, accompanied by his lawyer, was informed of the charges

against him. The testimonies and sales documents were collected during the preliminary investigation. In the course of the process, Dr. NN reported the aversion against his person by Mr. BB and other members of the Board of Directors of the AA Foundation. He stated that he had acted regularly because the value of the painting was low, and the measures of simple management depended on his discretionary judgment. Moreover, he specified that he had always provided timely information to the Board of Directors. A 15-day period was then granted for the defendant to submit through his attorney any defensive evidence and testimony. After the deadline had expired, documents containing the Minutes of the Board of Directors of the AA Foundation were accepted, and several witnesses were heard who confirmed personal disagreements with Dr. NN on the part of other members of the Board of Directors; at the same time, other documents as well as various appraisals concerning the value of the work sold were also acquired. Having unsuccessfully made a further call to present additional evidence on ..., by Decree Prot. No. ... / ..., the Delegate deemed the case sufficiently instructed, declaring the preliminary investigation phase closed.

In iure

4. The AA Foundation is a canonical foundation with public legal personality erected by Decree Prot. No. ... /.... As a result, the assets of the AA Foundation are to be considered ecclesiastical patrimony in accordance with canon 1257 §1 and subject to the canonical patrimonial regime.

5. Can.1281 §1 establishes the invalidity of acts of extraordinary administration carried out by the administrators without the prior written permission of the Ordinary, if they exceed the limit established by the respective Bishops' Conference.

6. Can. 1281 §2 defers to the Statutes the indication of acts exceeding the limits and modalities of ordinary administration

7. Can. 1376 §1 punishes the embezzlement of ecclesiastical property; in addition, can. 1376 §2 punishes the carrying out of acts of

extraordinary administration without carrying out the appropriate consultations prescribed by canon law.

In facto

8. The evidence, both for and against the accused, was carefully considered by both the Delegate and the two Assessors I appointed for the case.

9. In the expert's viewpoint it appears that there is a relevant discrepancy on the value of the painting compared to that communicated to the Board and delivered in the relevant Minutes.

10. In agreement with the technical assessments concerning the value of the painting, any act of disposition was to be considered an act of extraordinary administration.

11. Furthermore, from the concurring statement of witnesses MM and NN, it is evident that the painting was not sold at the price communicated to the Board of Directors and recorded by the Foundation's Cashier. In addition, the bank documentation contributed by Mr. TT shows that the payment realized by the buyer of the painting was as much as three times higher than the payment indicated to the Board of Directors. All of this is contrary to the claims of the accused, who, moreover, was unable to provide adequate justification.

At the conclusion of all this, I find it reasonably proven that the authorizations indicated in can. 1281 were not required by Dr. NN to carry out an act of extraordinary administration, incurring the delict typified in can. 1376 §1, 2°. Furthermore, I also consider it proven that Dr. NN is responsible for an act of embezzlement, typified by can. 1376 §1, 1°.

Accordingly, having reached the necessary moral certainty, I find Dr. NN guilty of a delict of unlawful administration typified by can. 1376 §1, 2° *CIC*; as well as a delict of embezzlement, typified by can. 1376 §1, 1°, for which he is sentenced to the penalty of deprivation from all ecclesiastical offices for the duration of ten years, with restitution of the amounts unlawfully received within the term of 30 days from the present date, under penalty of what is provided by can. 1371 §5.

The defendant has the right to appeal this decision (can. 1734 §§1-2), if he deems it appropriate, within the term of 10 days from the notification of this decree.

I further order that this decree be notified to the person concerned.

+NN
Bishop

CC
Notary

Appendix 20

Example of Minutes of Notification of a Sentencing Decree

Curia of the Diocese of XX
Extrajudicial Penal Procedure

Prot. No. ... / ...
Rev. NN - Prot. No. ... / ....

RECORD OF SERVICE

In the name of the Lord. Amen.

On (day) ... / ... / ... At xx:xx o'clock, in the offices of the Diocesan Curia of XX, in the presence of Rev. Fr. NN, Delegate in this cause, and ZZ defendant, accompanied by his attorney of trust, Adv. YY, and the undersigned BB, Notary Public in charge, the result of the cause is notified.

At the conclusion of the extrajudicial penal procedure initiated, the Diocesan Bishop NN issued a penal Decree in which he found the defendant guilty of having committed on (day) ... / ... / ..., a delict of unlawful alienation of church property punishable by can. 1376 §1, 2°. A copy of the Decree of conviction is delivered to Mr. ZZ, who is at the same time informed of the terms established by can. 1734 §§1-2 for any appeals, which begin to run from today's date.

These Minutes, prepared by the Notary, are read to those present, who approve and sign by them. The hearing ends at xx:xx.

Place and date

Signature of the Delegate
Signature of the Defendant

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APPENDIX