

EXAMINATION OF THE RIGHTS OF PRIESTS ACCUSED OF MISCONDUCT

NATIONAL FEDERATION OF PRIESTS' COUNCILS

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- I. The Church's canonical tradition includes procedures to examine issues of alleged misconduct.
 - A. These procedures are guided by principles that protect the rights of all parties, the victims, the faithful and the accused, and provide the means of arriving at just and equitable resolutions.
 1. In the best case scenario, diocesan policies and procedures make use of the principles of universal law and provide for the rights of all involved parties.
 2. Unfortunately, recent experience suggests that some in positions of authority are not using these procedures in a correct or competent fashion.
 - a. They simply ignore applicable canonical principles and procedures and act arbitrarily on their own initiative; or
 - b. They act on the basis of diocesan procedures or policies which have failed to take into regard the rights and protections of the Church's universal law.
 - c. It also appears that those in authority are being guided by civil attorneys, insurance companies or others who are not familiar with canonical rights or procedures.
- II. The investigation of an allegation of misconduct should be guided by diocesan policies and procedures which themselves reflect the principles found in the Code of Canon Law.¹
 - A. When an Ordinary has probable knowledge that an offense has taken place, he should implement a preliminary investigation.
 1. He can utilize the services of a delegate or an investigative team if he wishes, but any final determinations must be made by the Ordinary.
 2. He need not inform the accused priest of the preliminary investigation unless he intends to exclude him from ministry or place him in a special residence.
 3. If the Ordinary does elect to exclude the accused priest from ministry or place him in a special residence during the course of the investigation, the procedure outlined in canon 1722 must be followed.²

¹Can. 6 – §1. When this Code takes force, the following are abrogated:...

²° other universal or particular laws contrary to the precepts of this Code unless other provision is expressly made for particular laws;

²Can. 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

- a. The priest must be cited and his right of defense must be provided for:
 - (1) by assisting him in finding canonical representation, and
 - (2) providing him the opportunity of responding to the accusations that have been made.
 - b. The Promoter of Justice must be consulted.
 - (1) He is bound by office not simply to prosecute a case but to see that the safeguards and requirements of the law are being equitably applied.
 - (2) His responsibilities extend not only to the investigation of the case but also the rights of the victims and those of the accused, though he does not and cannot represent the accused.
 - c. Once the penal procedure is concluded or abandoned, all restrictions to the priest's ministry must cease.
4. During the course of the investigation, the needs of any victimized party must be examined and a decision made to address these issues at once or as part of the final determination at the conclusion of the process.
 - a. Victimized parties have the right to place a petition before the bishop or a competent tribunal to seek repair of damages.
 - b. These issues can be resolved directly by the Ordinary or by the competent tribunal if the Ordinary does not act.
 5. During the course of the investigation, the accused priest cannot be compelled or coerced to confess an offense (canon 1728, §2).³
 6. During the course of the investigation, the accused priest cannot be compelled or coerced to undergo a psychological assessment against his will (canon 220).⁴
 7. During the course of the investigation, the Ordinary must determine whether a criminal process can be pursued in light of the period of prescription.
 - a. Sexual crimes not reserved to the Congregation for the Doctrine of the Faith or not involving a minor have a period of prescription of five years from the date of the last offense (canon 1362).⁵

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.

³Can. 1728 – §2. The accused is not bound to confess the delict nor can an oath be administered to the accused.

⁴Can. 220 – No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy.

- b. Sexual crimes involving a minor which are reserved to the Congregation for the Doctrine of the Faith have a period of prescription of ten years which runs from the eighteenth birthday of the accused.⁶
 - c. Other crimes reserved to the Congregation for the Doctrine of the Faith have a period of prescription of ten years from the date of the last offense.⁷
8. Before concluding the investigation, the Ordinary must examine the accusation in the light of canon 1341 and determine:⁸
- a. Whether he is dealing with an individual who is sick and in need of help, or
 - b. Whether he is dealing with an individual who has committed a crime and must be punished.
- B. If the Ordinary concludes that the priest is psychologically or mentally ill and that this has gravely affected his imputability (i.e., personal responsibility) for his actions at the time of the offense, no penalty can be imposed at any time.
1. He can be removed from ministry on the basis of canon 1044, §2, 2°, once the Ordinary has consulted an expert who confirms the psychological or mental illness.⁹ ordinary, after consulting an expert, permits the exercise of the order.
 2. It falls to the priest to petition for a return to ministry once he can demonstrate through therapy that the psychological or mental illness has been dealt with.
- C. If the Ordinary concludes that the priest has committed a crime that must be punished:
1. If the crime is reserved to the Congregation for the Doctrine of the Faith, the acts of the preliminary investigation must be transmitted to the Congregation.

⁶Can. 1362 – §1. Prescription extinguishes a criminal action after three years unless it concerns:

1° delicts reserved to the Congregation for the Doctrine of the Faith;

2° an action arising from the delicts mentioned in canon. 1394, 1395, 1397, and 1398, which have a prescription of five years;

3° delicts which are not punished in the common law if particular law has established another period for prescription.

⁸§2. Prescription runs from the day on which the delict was committed or, if the delict is continuous or habitual, from the day on which it ceased.

⁶Cf. Congregation for the Doctrine of the Faith, *Sacramentorum Sanctitatis Tutela*, April 30, 2001.

⁷*Ibid.*

⁸Can. 1341 – An ordinary is to take care to initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, reform the offender.

⁹Can. 1044 – §2. The following are impeded from the exercise of orders: ...

2° a person who is affected by amnesia or some other psychic illness mentioned in can. 1041, n. 1 until the ordinary, after consulting an expert, permits the exercise of the order.

- a. A determination will be made whether to call the case to itself or have it adjudicated at the diocesan level.
 - b. The case must be examined in the judicial forum.¹⁰
2. If the crime is not reserved, an administrative or judicial penal process can be undertaken at the diocesan level.

III. Recent reports in the news media give rise to significant concerns relative to the rights of priests.

- A. Priests are being removed from ministry, being placed in special residences or denied residence, and having their remuneration discontinued by administrative decision of the Ordinary simply on the basis of proven or unproven allegations of sexual misconduct.
 1. If no penal process has been undertaken providing for the use of canon 1722, this constitutes a violation of canon 221, §3.¹¹
 2. The law itself prohibits a criminal process in the case of allegations in which the period of prescription has lapsed.
- B. Priests are being removed from ministry, being placed in special residences or denied residence, and having their remuneration discontinued by administrative determination for cases allegedly resolved to everyone's satisfaction years and even decades ago.
 1. If all parties were satisfied with the previous resolution of the matter, the present action fails to respect the determinations made on the basis of the principles of canon 1341.
 2. If the period of prescription has lapsed in such cases, a penal process cannot be undertaken.
- C. Priests are being coerced to petition for laicization.
 1. The placement of a petition for dispensation from the obligations arising from ordination to the priesthood is invalid if it is obtained through coercion or the unjust force or fear.
 2. Any juridic act placed by a priest under coercion or fear can be rescinded by a competent tribunal.¹²

¹⁰Congregation for the Doctrine of the Faith, *op.cit.*

¹¹Can. 221 – §3. The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law.

¹²Can. 124 – §2. An act placed out of grave fear, unjustly inflicted, or out of malice is valid unless the law provides otherwise. It can be rescinded, however, through the sentence of a judge, either at the instance of the injured party or of the party's successors in law, or ex officio.

Cf. Can. 1419 – §3. Judgment of the following is reserved to the Roman Rota:...

1° bishops in contentious matters, without prejudice to the prescript of can. 1419, §2...

MAJOR MOMENTS IN THE PENAL PROCESS & APPLICATION OF PENALTIES

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The "world of law" and the "world of lived experience" often appear to have little correspondence. At the least they speak different dialects of the same language, more often they seem to speak different languages with different vocabularies and processes of logic. The following two sets of ideas go together in any discussion on the penal process.

APPLICATION OF PENALTIES (CC. 1341- 1353)

The judge or ordinary may not simply determine that a law has been broken before penalizing someone; rather he must weigh carefully the relevant factors that put the violation in perspective, i.e. the factors affecting imputability (c. 1321, §§ 1-2).

- c. 1341 Penalties as a Last Resort
- c. 1342 Penal procedure to be used
- c. 1343 Facultative penalties
- c. 1344 Preceptive penalties
- c. 1345 Waiving of penalty
- c. 1346 Multiple delicts
- c. 1347 Conditions for a censure
- c. 1348 Quasi-penal options
- c. 1349 Judicious application of penalties
- c. 1350 Support of penalized cleric
- c. 1351 Territorial Scope of penalty
- c. 1352 Observance of penalty suspended
- c. 1353 Suspensive effect of appeal or recourse against penalty

PENAL PROCESS (CC. 1717-1731)

- I. The Preliminary Investigation
(seeks to answer the questions (1) was a delict, cc. 1364-1399 committed; was their imputability as noted in canons 1322-1327; results in a written report, c. 1719.)
 - c. 1717 Initiation of the investigation
 - c. 1718 Decree of the Ordinary regarding the penal process
 - c. 1719 Custody of the acts

- II. The Development of the Process
 - c. 1720 Administrative penal process
 - c. 1721 Role of the Promoter of Justice
 - c. 1722 Restrictions on the Accused
 - c. 1723 Counsel for the Defendant
 - c. 1724 Renunciation of the penal trial
 - c. 1725 Last word for the Defendant
 - c. 1726 Absolution of the Defendant
 - c. 1727 Appeal by Defendant/Promoter
 - c. 1728 Self-incrimination privilege & procedural canons to be used in penal trials.

- III. Action to Repair Damages
- c. 1729 Conditions for the action for damages
 - c. 1730 Deferral of the action for damages
 - c. 1731 Effect of penal Sentence on the action for damages

SOME IDEAS ON THE RIGHT OF DEFENSE

1. The Latin code does not explicitly require the involvement of the accused in the prior investigation phase of a penal process, but canon 50 implicitly calls for it. The Code of Canons of the Eastern Churches in canon 1464, §3 requires the *hierarch* (bishop) to hear both the accused and the promoter of justice before deciding about the process.
2. Canon 1728, §2 protects the accused against self-incrimination.
3. Canon 220 protects the reputation of the accused.
4. Access to canonical counsel is explicitly required after the process is initiated by c. 1723, but be considered at the time of the prior investigation.
5. Canon 1446 offers the bishop a generic statement encouraging a peaceful resolution for a claim for damages, but such a solution may not be imposed on unwilling parties.
6. The 1983 code drops a provision of the 1917 code whereby a superior could prohibit a cleric from exercising his ministry or remove him from office without a process (1917 CIC c. 2222, §2).
7. The 1983 code also drops a provision of the 1917 code which allowed the suspension of a cleric *ex conscientia informata* (1917 CIC 2186-2194).

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THE OBLIGATIONS & RIGHTS OF ALL THE CHRISTIAN FAITHFUL

(cc. 208-223)

C. 208	Fundamental Equality
C. 209	Obligations of Communion
C. 210	Holiness of Life
C. 211	Proclaim the Gospel
C. 212, §1	Obedience
C. 212, §2	Expression of Needs and Desires
C. 212, §3	Public Opinion
C. 213	Spiritual Assistance
C. 214	Worship and Spirituality
C. 215	Association and Assembly
C. 216	Apostolic Activity
C. 217	Christian Education
C. 218	Freedom in Pursuit of Sacred Sciences
C. 219	Choice of State in Life
C. 220	Reputation and Privacy
C. 221, §§1-3	Protection of Rights
C. 222, §1	Support of the Church
C. 222, §2	Social Justice and Charity
C. 223, §§1-2	The Common Good and Limitations of Rights

THE OBLIGATIONS & RIGHTS OF CLERICS

(cc. 273-289)

C. 273	Clerical Reverence and Obedience
C. 274, §1	Certain Offices Restricted to Clerics
C. 274, §2	Clerical Duty to Accept Assignments
C. 275, §§1-2	Clerical Cooperation
C. 276, §§1-2	Holiness of Life
C. 277, §§1-3	Clerical Celibacy
C. 278, §§1-3	Clerical Associations
C. 279, §§1-3	Continuing Education
C. 280	Common Life
C. 281, §§1-3	Clerical Remuneration and Support
C. 282, §§1-2	Clerical Simplicity of Life
C. 283, §§1-2	Clerical Residence and Vacation
C. 284	Clerical Dress
C. 285, §1	Inappropriate Clerical Activity
C. 285, §2	Activity Foreign to Clerics
C. 285, §3	Public Office
C. 285, §4	Financial Involvement
C. 286	Business or Trade
C. 287, §§1-2	The Clergy as Signs of Peace
C. 288	Exemptions for Permanent Deacons
C. 289, §§1-2	Use of Exemptions Allowed by Civil Law

Select Canons:

- c. 96 by baptism one is incorporated into the Church of Christ and is constituted a person in it with the duties and rights which are proper to Christians in keeping with their condition, insofar as they are in ecclesiastical communion and unless a legitimately issued sanction stands in the way.
- c. 220 No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy.
- c. 221 §1 The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law.
- §2 If they are summoned to trial by a competent authority, the Christian faithful also have the right to be judged according to the prescripts of the law applied with equity.
- §3 The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law.