

## REVISED PENAL SANCTIONS OF CIC BOOK VI AND CCEO TITLE XXVII: A COMPARATIVE READING

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### Abstract

The article "Title XXVII of CCEO and the Revised Book VI of CIC: A Comparative Reading" is an attempt to verify whether through the revision of Book VI of CIC the differences and similarities between the Codes have increased or not. A comparative reading of the texts shows that while the main differences between the Codes in the penal norms continue even after the revision of Book VI of CIC, certain similarities have increased between the Codes due to the modifications in the revised text.

**Keywords:** Comparative reading; penal sanctions Book VI of CIC; penal sanctions in CCEO; Revision of Book VI of CIC.

### Introduction

The Title XXVII of CCEO (canons 1401-1467) and Book VI of CIC (canons 1311-1399) deal with penal sanctions. It is in the section of penal sanctions that CCEO and CIC, for all that they have in common, can also be best seen to follow each its own genius.<sup>1</sup> The differences are mainly with regard to the *latae sententiae* penalties, the distinctions

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<sup>1</sup> Carl G. Fürst, "Penal Sanctions in the Church," in George Nedungatt, ed., *A Guide to the Eastern Code*, Kanonika 10 (Rome: Pontificio Istituto Orientale, 2002), 787-800, 798.

between major-minor excommunications, censures-expiatory penalties, penalty-penance, the penalty of demotion, etc.<sup>2</sup>

CIC had come into force in 1983. For various reasons, in 2007, Pope Benedict XVI ordered the Pontifical Council for Legislative Texts to begin the process of revising the penal sanctions contained in the 1983 Code. The revision work lasted about 12 years and the revised text was promulgated in May 2021 by Pope Francis' apostolic constitution *Pascite gregem Dei* (Tend the flock of God) and it would come into force on 8 December 2021. It is to be noted that 74 canons out of 89 of Book VI of CIC have been modified. In the revised Book VI, though the total number of canons remained the same, the order of the canons was rearranged, some new canons added, and most of the canons modified.

The attempt here is to make a comparative reading of the revised Book VI of CIC and the Title XXVII of CCEO in order to verify whether, through the revision of Book VI, the differences and similarities between the Codes have increased or not.

### 1. The Differences Continue

In general, it should be observed that the main differences between the penal laws of the Codes continue even after the revision of Book VI of CIC. For example, the much-disputed *latae sententiae* penalties are still present in the revised Book VI of CIC. Before the revision, the following Latin penal canons had no parallel in CCEO:<sup>3</sup>

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<sup>2</sup> For comparative studies between the penal norms of CIC/83 and CCEO, see: Thomas J. Green, "Penal Law in the Code of Canon Law and in the Code of Canons of the Eastern Churches: Some Comparative Reflections," *Studia Canonica* 28 (1994) 407-451; John D. Faris, "Penal Law in the Catholic Churches: A Comparative Review," *Folia Canonica* 2 (1999) 53-93; Giuseppe Di Mattia, "La normativa di diritto penale del *Codex Iuris Canonici* e nel *Codex Canonum Ecclesiarum Orientalium*," *Apollinaris* 65 (1992) 149-172; Sergio Dubrowsky, "Il diritto penale della intera Chiesa Cattolica: Apporti del *Codex Canonum Ecclesiarum Orientalium*," Raffaele Coppola, ed., *Incontro fra canoni d'Oriente e d'Occidente*, vol. II (Bari: Cacucci, 1994) 535-541; James M. Pampara, "Characteristic Features of the Penal Law in the Code of Canons of the Eastern Churches," *Iustitia: Dharmaram Journal of Canon Law* 2 (2011) 267-294.

<sup>3</sup> Canon Law Society of America, *Code of Canons of the Eastern Churches*, Latin-English Edition, New English Translation (Washington: Canon Law Society of America, 2001) 729-739.

- 1311: Church's inherent right to constrain with penal sanctions
  - 1312: Censures, expiatory penalties, penal remedies, penances
  - 1318: *Latae sententiae* penalties
  - 1322: Regarding those who habitually lack the use of reason
  - 1325: Ignorance, drunkenness, mental disturbances, passion
  - 1327: Particular law and attenuating or aggravating circumstances
  - 1330: Declaration and manifestation of an offence
  - 1340: Penance
  - 1341: Starting a penal procedure
  - 1343: The judge may modify the penalty
  - 1345: The judge can refrain from inflicting any punishment
  - 1348: When the person has been found not guilty of an accusation
  - 1357: Remission of *latae sententiae* penalties
  - 1372: Appeal against an act of the Roman Pontiff
  - 1385: A person who traffics for profit in Mass offerings
  - 1396: Violation of the obligation of residence
  - 1399: Punishment of the cases not prescribed in the law
- None of the above canons is abrogated in the revised Book VI of CIC. Before the revision, the following Oriental penal canons had no parallel in CIC/83:<sup>4</sup>
- 1401: Theological canon - the responsibility of the pastors to employ penal measures
  - 1402 §§1&3: Necessity of judicial procedure to impose a penalty; the authority who can punish through an extra-judicial decree
  - 1403: Possibility of abstaining from the penal process
  - 1404: Benign interpretation of penal law
  - 1406§2: Warning and penal precepts
  - 1407§3: Warning
  - 1411: No penalty can be imposed after a penal action has been extinguished.

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<sup>4</sup> George Nedungatt, ed., *A Guide to the Eastern Code, Kanonika 10* (Rome: Pontificio Istituto Orientale, 2002), 954-955.

1412 §1: One who is bound by the law or a precept is also subject to the penalty attached to it.

1423 §1: Reservation to the Patriarch

1426 §2: Penitential penalties

1427 §2: Public rebuke

1428: Surveillance of the offender

1431 §2: The sentence or the decree must determine the extent and duration of the penalty

1433 §1: Demotion

1438: Commemoration of the hierarch

1460: Approaching the civil authority for ordination, etc

1465: Inducing someone to change the Church *sui iuris*

Among the above indicated canons of CCEO, as far as I understand, only canons 1401 (theological canon – the responsibility of pastors) and 1428 (regarding the surveillance of the offender) have found parallels in the revised Book VI of CIC (canons 1311 and 1339 §5).

Moreover, there are many new norms in the revised Book VI of CIC which are not present in the Oriental Code:

1321 §1: Any person is considered innocent until the contrary is proved.

1326 §3: In certain cases, discretionary penalties become obligatory.

1332 §§2-3: Regarding interdict

1335 §1: Expiatory penalties

1338 §§4-5: Prohibitions

1339 §§4: Warnings and penal precept

1346 §1: There are as many penalties as there are offences

1361 §4: Remission must not be granted until the offender has repaired any harm caused.

1362 §3: Prescription of the criminal action

1371 §§4-6: The obligation of observing the pontifical secret; obligation to execute an executive sentence; the negligence to report an offence

1377 §2: Requesting an offering beyond that which is established

1379 §§3-4: Attempt to confer a sacred order on a woman; administering a sacrament to those who are prohibited

1382 §2: Consecrating for sacrilegious purpose one element only or both elements within the Eucharistic celebration

1386 §3: Recording of the sacramental confession

1388 §2: Reception of sacred orders by concealing some irregularity

1389: Unlawful exercise of the office of a priest

1392: Abandoning the sacred ministry for six months continuously

1393 §2: Offence in a financial matter

1395 §3: A cleric who by force, threats, or abuse of his authority commits an offence against the sixth commandment of the Decalogue

1398: Offence against the sixth commandment of the Decalogue with a minor by a cleric; pedopornography; similar offences by 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.

Some of the above indicated new canons in Book VI are penal norms promulgated after 1983 through *Sacramentorum sanctitatis tutela* (SST), *Vos estis lux mundi* (VELM), etc.

## 2. More Similarities

Certain modifications in the revised text of Book VI have brought more similarity between penal norms of the Codes.

2.1 The title of Book VI of CIC/83 was "Sanctions in the Church" (*De Sanctionibus in Ecclesia*). But, when CCEO was promulgated in 1990, the canonists of the Eastern Churches preferred the title, "Penal Sanctions in the Church" (*Sanctionibus poenalibus in Ecclesia*). Now, the title of Book VI of CIC is modified as "Penal Sanctions in the Church" as in CCEO. The change is not casual.

The title of the penal section Book V of CIC/1917 was "*De delictis et poenis*" (Delicts and Penalties).

During the *iter revisionis* of CIC/1983, there was formed a line of opinion (minority, but nonetheless present) that wanted to remove the penal nature of the book in favour of discipline of the sanctioning type, a disciplinary system adhering less to the rigid

concepts of offence and penalty, and more along the lines of a sanctioning administrative system than a true penal system.<sup>5</sup>

This line of opinion would have influenced the change of the title from “Delicts and Penalties” to “Sanctions in the Church”, avoiding any reference to “penal”.<sup>6</sup> However, the term “sanction” could either have a penal or non-penal meaning. Throughout CIC, the term “sanction” refers to an intervention by the competent authority or by the law, by virtue of which a confirmation, approval or recognition with juridical value is given, a juridical link is created, or a penalty is imposed. The specific meaning in each case should be deduced from the context in which it is used.<sup>7</sup> Therefore, during the codification of the Oriental Code, some experts wanted to add the term *poenalibus* to the title. According to them, sanctions in canon law need not always be penal and therefore, without the addition of *poenalibus*, the title would not be precise.<sup>8</sup> Now this Eastern ‘reasoning’ is taken into consideration also by those who worked for the revision of Book VI.

2.2 Another similarity is seen due to the change in the attitude towards the penal sanctions in the revised Book VI. In *Pascite gregem Dei*, Pope Francis speaks of a manner of thinking in the past which failed to appreciate the close relationship existing in the Church between the exercise of charity and recourse to disciplinary sanctions. The revision of Book VI was necessitated by a change in this “manner of thinking” towards the application of penal sanctions. The Oriental Code in comparison with the Latin Code underlined more the need to employ the penal measures in the correction of an offender. The revision of Book VI has paid attention to this positive approach towards penal measures in pastoral governance. This could be seen in the modification of canons 1311 and 1341.

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<sup>5</sup> Ángel Marzoa, “Introduction to Book VI,” *Exegetical Commentary on the Code of Canon Law*, Vol. IV/1, (Canada: Wilson & Lafleur, 2004) 196-208, 197.

<sup>6</sup> The title “Delicts and Penalties” was given to part I of Book VI of CIC/1983.

<sup>7</sup> Ángel Marzoa, “Introduction to Book VI,” *Exegetical Commentary on the Code of Canon Law*, Vol. IV/I, 197.

<sup>8</sup> “Con l'aggiunta della parola *poenalibus* nel titolo si è voluto andare incontro a coloro i quali sono del parere che le sanctiones nel diritto canonico non sempre sono penali, come p.e. avviene nelle *irregularitates ex delictis* che non sono pene canoniche.” *Nuntia* 12 (1981) 78; See also *Nuntia* 4 (1977) 75.

The introductory canon of the penal law section of CIC/83 (1311) had dropped a paragraph of its source canon in CIC/17 (2214) which already contained a theological formulation on the need to punish, citing Council of Trent. When CCEO was promulgated, its introductory canon (1401) of the penal law section was very much appreciated for its theological richness. One of the appreciated aspects of this canon was its reference to the necessity of adopting penal measures by the pastors. The canon in its last part stated: "Indeed, they (the pastors) are even to impose penalties in order to heal the wounds caused by the delict so that those who commit delicts are not driven to the depth of despair nor are restraints relaxed unto a dissoluteness of life and contempt of the law." This canon expressed the necessity of imposing penalties. Now, in order to highlight the necessity of applying the penal measures, the revised text of Book VI of CIC has added a paragraph to canon 1311, which states: "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."

This attitudinal change could be also seen in the modifications to canon 1341. The old text stated: "The Ordinary is to start a judicial or administrative procedure for the imposition or the declaration of penalties only when he perceives that neither by fraternal correction nor reproof nor by any method of pastoral care, can the scandal be sufficiently repaired, justice restored and the offender reformed." Now the revised text of canon 1341 states:

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.

The change from "is to" to "must" and from "only when" to "when" are noteworthy. The shift emphasizes the new text's general expectation that bishops and superiors will incorporate penal law into

their ordinary governance of the Church's life, as part of a general tightening of Church discipline.

2.3 A third similarity between the Codes due to the revision of Book VI is seen in the norm regarding the unlawful alienation of ecclesiastical good. CIC/1983 c. 1377 stated that "a person who without the prescribed permission alienates ecclesiastical goods, is to be punished with a just penalty. While the corresponding c. 1449 in CCEO states: "A person who has alienated ecclesiastical goods without the prescribed consent or permission is to be punished with an appropriate penalty." The clause "consent" is now incorporated into the revised Book VI in c. 1376 §1, 2<sup>o</sup>: "a person 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 is to be punished." The old text of the canon spoke only of the prescribed permission and not of consent and consultation. The permission is always from a higher authority, and the consultation/consent refers to the need to take into consideration the canonical bodies.

2.4 Similarity between the codes has become more also due to the revision of canon 1360. In CIC/1983 c. 1360 was: "The remission of a penalty extorted by grave fear is invalid." While CCEO c. 1421 included as a reference also to force and fraud. "The remission of a penalty extorted by force, grave fear or fraud is null by the law itself." Now the revised text of c. 1360 has included these two references of the Oriental norm: "The remission of a penalty extorted by force or grave fear or deceit is invalid by virtue of the law itself."

2.5 CCEO c. 1428 states: "If the gravity of the case demands and especially if it concerns recidivists, a hierarch can, in addition to the penalties imposed by sentence in accord with the norm of law, place the offender under supervision in the manner determined by an administrative decree." This Eastern canon had no parallel in CIC/1983. Now in the revised Book VI, c. 1339 has incorporated in its paragraph 5 this aspect: "If the gravity of the case so requires, and especially in a case where someone is in danger of relapsing into an offence, 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."

2.6 CIC/1983 c. 1342 stated: "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." The expression "just reasons" was not at all easy to interpret. On the other hand, CCEO prescribes as a general rule that a canonical penalty must only be imposed after a penal trial (c. 1402). "If there are grave causes that preclude a penal trial and the proofs concerning the delict are certain, the delict can be punished by an extra-judicial decree, provided it does not involve a privation of office, title, insignia, or a suspension for more than one year, demotion to a lower grade, deposition or major excommunication." The spirit of this CCEO canon seems to have been considered in the revision of c. 1342, which asks in the choice of extra-judicial means to observe c. 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 c. 1608."

2.7 In CIC/1983 c. 1316 stated: "Diocesan Bishops are to take care that as far as possible any penalties which are to be imposed by law are uniform." The reference was to the uniformity of penalties in the same territory. Instead, CCEO had in its c. 1405 §3: "In so far as it is possible, patriarchs and eparchial bishops are to take care that penal laws of particular law are uniform in the same territory. Here the reference is to the uniformity of the penal laws in the same territory and not to penalties. Now, the revised text of c. 1316 has taken into consideration this Eastern formulation: "Diocesan Bishops are to take care that as far as possible any penal laws are uniform within the same city or region."

These similarities were probably caused as many Oriental canonists were consulted in the revision of Book VI of CIC.

### **3. Concluding Remarks**

The revision of Book VI is to be appreciated from many points of view. From the Oriental point of view, the emphasis of the revised text on the necessity of applying the penal measures, especially as an expression of a pastoral charity aiming at the reform of the offender, is a positive feature to be appreciated.

The much-debated issue of *latae sententiae* penalties still remains unresolved. This is one of the areas where the application and remission of penalties appear to be very difficult.

Another remark is with regard to the delicts reserved to the Congregation for the Doctrine of Faith (CDF). In the context of the prescription of penal action, CIC/1983 c. 1362 §1, 1 stated of the reservation of certain delicts to the Congregation for the Doctrine of Faith while CCEO c. 1152§2, 1 stated of the reservation to the Apostolic See. The Codes did not identify these reserved delicts. In 2001, Pope John Paul II issued the *motu proprio Sacramentorum sanctitatis tutela* (SST) reserving certain delicts to the CDF, and promulgated the substantive and procedural *Normae de gravioribus delictis*. Now, the revised text of Book VI does state in the c. 1362 §1, 1 that the offences reserved to the CDF have a special period of prescription. Some of the new crimes stated in the SST are also incorporated into the revised Text. However, nothing is stated in the revised Book VI about the reservation of these delicts to the CDF. For example, c. 1398 which speaks of the offence against the sixth commandment of the Decalogue with a minor does not say anything about its reservation to the CDF and its special procedural norms. The explanation could be that it would be included in the revision of *Pastor Bonus*, regarding the competence of various Dicasteries. However, it would have been better to add some reference to it in the revised text.

After a comparative reading of the revised Book VI of CIC and the penal norms of CCEO, it seems to me that the content of CCEO c. 1465 could have been included in the revised text. According to this canon, “a person who, ascribed to any Church *sui iuris*, including the Latin Church, and exercising an office, a ministry or another function in the Church, has presumed to induce any member of the Christian faithful whatsoever to transfer to another Church *sui iuris* contrary to c. 31, is to be punished with an appropriate penalty.” According to CCEO c. 1, “the canons of this code concern all and solely the Eastern Catholic Churches unless, with regard to relations with the Latin Church, it is expressly established otherwise.” When the interrelationship is expressly stated, that norm of CCEO effectively becomes part of Latin canonical legislation.<sup>9</sup> This is one of the nine CCEO canons which explicitly name the Latin Church. “CCEO c. 1465 explicitly forbids under penalty also those of the Latin Church who

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<sup>9</sup> Jobe Abbass, “CCEO and CIC in Comparison,” George Nedungatt, ed., *A Guide to the Eastern Code*, Kanonika 10 (Rome: Pontificio Istituto Orientale, 2002), 847-896, 882.

exercise a ministry or hold any office or function in the Catholic Church to induce in any way Eastern Catholics to transfer to the Latin Church."<sup>10</sup> Therefore, if the content of this Oriental canon were included in Book VI of CIC, it would have been helpful to those who follow the Latin code to be aware of such a penalty applicable to them.

In the light of the revision of Book VI of CIC, does the penal section of the Oriental Code require any revision? Surely, yes. The new canons in Book VI with due modifications should be also part of CCEO. As far as I understand, the reduction of the differences in the penal laws of the Codes was not among the objectives of the revision of Book VI. Though canonists had already pointed out the difficulties in the application of penal law due to the differences in the Codes, it was not a topic of discussion in the revision process. If it were among the objectives of the revision, I think, much more could have been done.

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<sup>10</sup> Jobe Abbass, "CCEO and CIC in Comparison," 886.