

DISTINCTIVE MOTIVES FOR DISMISSAL OF RELIGIOUS IN *CIC* AND *CCEO*

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The author makes a canonical study on dismissal from religious institute. Dismissal from religious institute is a very painful act both for the institute and for the member in question. It is imposed, however, as a consequence of certain offences or other grave acts committed by religious. As an effect of dismissal, the bond of membership is affected. The historical background of this notion clarifies its importance from the very inception of religious life in the Church. The author enumerates various motives for dismissal in the light of both Latin and Oriental Codes. While *CIC* 1983 lists three possible forms of dismissal: automatic (c. 694), mandatory (c. 695) and facultative (c. 696), the Eastern Code of 1990 mentions only two categories of dismissal, namely *ipso iure* (c. 497) and facultative (c. 499). This article treats in detail various causes for the imposition of dismissal in *CIC* and *CCEO*. Certain causes are unique to one of the codes, and some other causes are identical. Both are specified vividly.

Introduction

"I vow to God forever, ..." is the pronouncement each religious professes before God and the Church. Certainly, the call to follow Christ who is chaste, poor, and obedient has been an innate reality throughout the Church's history. From the beginning, consecrated life was considered as a school of holiness, not an exhibition gallery with only masterpieces on display. Those who follow this way of life are not "holy," but striving to achieve holiness through daily perseverance

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and prayer. While the majority of religious continue to observe the lifelong commitment they have made, human frailty prevents some who strive for holiness from persevering to the end. This phenomenon is not new, but a reality which coexists with “call and commitment.”

When an individual’s unfaithfulness to his or her consecration challenges the very core of religious life, she/he becomes a source of great scandal for the religious institute and the Church. Therefore, the good of the individual and of the community may require that disciplinary measures be applied against a troublesome member. At times, the member must be dismissed in order to purify the religious institute and preserve its unity and discipline. Since dismissal deprives the individual from membership in his or her institute, it is considered a most painful decision by the religious institute and should be used only as a last resort.

Founders of various forms of religious life were often forced to use canonical measures to protect the community from members who acted contrary to the nature of consecrated life. Over time, the Church’s legislation has become more sensitive towards the process of dismissal without diminishing esteem for the religious state. Various councils promulgated these practices as laws, which are now part of the *Corpus iuris* of the Church. Consequently, the present body of canon law of the Church, namely the Code of Canon Law (*Codex Iuris Canonici*) of 1983¹ and the Code of Canons of the Eastern Churches (*Codex Canonum Ecclesiarum Orientalium*)² of 1990, contains well-articulated laws on dismissal. This paper attempts to study the concept of ‘dismissal from Religious Institutes’ in both codes (CIC cc. 694-704 and CCEO cc. 497-503/551-553). The paper does not attempt to compare Eastern and Latin legislation on dismissal, but rather to explore the concept of it in light of both codes. This paper explains only the substantial norms on dismissal, leaving the procedural norms to be discussed in the next issue.

¹Canons are taken from *Code of Canon Law*, Latin-English Edition, Prepared under the auspices of the Canon Law Society of America (Washington: Canon Law Society of America, 1999).

²Canons are taken from *Code of Canons of the Eastern Churches*, Latin-English Edition, prepared under the auspices of the Canon Law Society of America (Bangalore: Theological Publications in India, 2003).

2. Juridical Antecedents of Laws on Dismissal

The word "dismiss" comes from the Latin word *dimittere*. The verb *dimittere* is a combination of the prefix *dis*, or *di*, and the verb *mittere*. The prefix *di* means "apart" and *mittere* signifies "to send."³ However, the noun "dismissal" is often used to indicate "an order or judgment finally disposing of an action, suit, motion, etc., without trial of the issues involved."⁴ Such an order could be either a voluntary or an involuntary action in the law.

The word "dismissal" was introduced only as recently as 1825. Before then, the term used was "expulsion."⁵ Nevertheless, the present procedures for dismissal did not crop up like mushrooms in the *corpus iuris* of the Church. The concept of dismissal from a religious institute goes back almost as far back in history as religious life itself. The rules of founders of various monastic traditions, canonical legislation from various councils, and regulations from civil as well as ecclesiastical authorities have all touched upon the notion of dismissal.

During the first five or six centuries, women and men shared the same basic monastic rules. These rules strongly emphasized their common spiritual quest and severely punished those who digressed from this pursuit. As a result, various early councils as well as ecclesiastical and civil heads repeatedly affirmed the need for holiness and perseverance in religious life. Since the application of the laws on dismissal depended upon the gravity of a particular offence, many and great difficulties accompanied the procedure for dismissing a religious. The legal procedures remained vague until 1911, when the Sacred

³P. B. Gove et al., eds., *Webster's Third New International Dictionary* (Chicago: G. & C. Merriam Co., 1976) 652.

⁴S. Battaglia et al., eds., *Grande dizionario della lingua italiana*, Vol. IV (Torino: Unione Tipografica, 1966) 475; also referred in H. C. Black et al., *Black's Law Dictionary*, 469. In the terminology of the codes, "dismissal" is understood to mean "... Definitive departure from the religious institute as penalty, under the initiative of the competent authority of the Institute and the approval of the Ecclesiastical authority. It is often done against the will of the religious." F. J. Egaña, "Dimissione," in C. C Salvador et al., eds., *Nuovo dizionario di Diritto Canonico* (Milano: Edizioni San Paolo, 1993) 345.

⁵J. A. H. Murray et al., eds., *The Oxford English Dictionary: A New English Dictionary on Historical Principles* (Oxford: Clarendon, 1978) 493.

Congregation for Religious issued a new and complete form.⁶ With some modifications, these procedures were incorporated in twenty-six canons in the 1917 code (cc. 646-672).

According to the 1917 code, dismissal is effected by the decree of a competent superior and by law, *ipso facto*, or automatically (c. 646) as a result of certain errant actions on the part of the religious. The dismissal of the religious in the 1917 code differed according to the status of the religious (cleric or lay, woman or man) and the nature of the vows (temporary or perpetual, simple or solemn). The procedure used also depended upon the status of the institute, namely, whether it was of diocesan right or pontifical right; an exempt or non-exempt institute. Nevertheless, procedures for dismissal differed only slightly. The more solemn form of dismissal was prescribed for members of male institutes with a clerical character, which belonged to the category of exempt religious. A judicial process was required before dismissing any member of an exempt clerical religious institute (cann. 654-668). The dismissed religious was not thereby freed from the obligations of the vows, which could only be annulled by a dispensation from the Holy See (c. 672).

The 1952 *motu proprio Postquam apostolicis litteris (PA)*⁷ followed the ordering and content of the complicated procedure found in the 1917 code. Applying the norms often raised substantial or procedural questions, clarification of which religious institutes had to request from the Holy See. The answers presented to these questions as well as circular letters from the Sacred Congregation for Religious⁸ clarified legal issues regarding dismissal. These deliberations were the result of the discussions held by the sub-commission *De institutis perfectionis* that drafted canons for the 1983 CIC and the *coetus*

⁶Sacra Congregatio pro Religiosis, Decretum, *De methodo servanda in ferenda sententia expulsionis vel dimissionis ab ordinibus et institutis religiosis*, 16 May 1911, in AAS 3 (1911) 235-238. This decree explicitly listed the causes for *ipso facto* dismissal. The decree, which also addressed procedures for the dismissal of nuns in simple and solemn vows, was applicable to *all* religious without exception.

⁷Pius XII, *Motu Proprio Postquam apostolicis litteris*, 9 February 1952, in X. Ochoa, *Leges Ecclesiae, post codicem iuris canonici editae*, Vol. 2 (Roma: Commentarium pro Religiosis, 1966) cc. 197-223.

⁸Sacra Congregatio pro Religiosis et Instituti Saecularibus, *Normae, Normae Servandae in dimissione religiosorum a votis perpetuis* (December 1976) in *Informationis* 2 (1976) 83-86.

de monachis that drafted canons of CCEO. The topic of dismissal was discussed at length in the revision of both codes.

3. Some Preliminary Notions

Before proceeding with the explanation of dismissal from religious institutes, let me first clarify certain basic differences between the codes regarding canonical status of religious, hierarchical structure, and different forms of consecrated life.

a. Canonical Status: Canon 207 §1 of CIC 1983 divides the entire Christian faithful into two categories: clerics and laity; however, CCEO does this with three: laity, religious, and clerics (c. 399).

b. Hierarchical Structure: The Latin Church has two primary levels of hierarchy, the Roman Pontiff (universal jurisdiction) and the diocesan bishop (jurisdiction over a “particular church”). Eastern churches have intermediate hierarchs between the Roman Pontiff and diocesan bishop. The status of each *sui iuris* church corresponds to the title of its chief hierarch (Patriarch, Major Archbishop, and Metropolitan). Likewise, the ecclesiastical superior of an institute of consecrated life could also differ according to the canonical status of the institute.

c. Institutes of Consecrated Life: In CIC 1983, ‘institutes’ of consecrated life are basically divided into religious institutes and secular institutes, with societies of apostolic life being treated similarly to consecrated life. CIC 1983 also recognizes hermits (c. 603) and orders of virgins (c. 604), while CCEO accepts monasticism in its different forms, orders, and congregations besides other individual forms. CCEO also treats societies of apostolic life as consecrated life.⁹

d. Terminological Clarifications

<i>CIC</i>	<i>CCEO</i>
Diocese	Eparchy
Diocesan Bishop	Eparchial Bishop
Proper law ¹⁰	Typicon
Supreme Moderator	Superior General

⁹Jobe Abbass, *The Consecrated Life: A Comparative Commentary*, 4-7.

¹⁰This “proper law” consists of two parts: a fundamental code, or constitutions, and a supplementary text, or statutes. The “proper law”, therefore is both pedagogic and exhortatory. R. M. McDermott, “Cc. 573-616” in *New Commentary on the Code of Canon Law*, in J. P. Beal et al., eds., *New Commentary on the Code of Canon Law* (Bangalore: TPI, 2003) 753.

4. Distinctive Categories of Dismissal

The 1983 code lists three possible forms of dismissal, all of which were found in the 1917 code: automatic (c. 694), mandatory (c. 695) and facultative (c. 696). However, the 1990 oriental code contains only two categories of dismissal, namely *ipso iure* (c. 497) and facultative (c. 499).¹¹ For ease of comparison, this paper presents the canons of both codes together. Nevertheless, certain norms are unique to one of the codes, and at times identical provisions are articulated differently.¹²

4.1. Automatic Dismissal

CIC	CCEO
<p>C. 694: §1 A member must be held as <i>ipso facto</i> dismissed from an institute who:</p> <p>1° has <i>defected notoriously</i> from the Catholic faith;</p> <p>2° has contracted marriage or attempted it, even only civilly.</p>	<p>C. 497: §1 A member must be held dismissed from a monastery <i>by the law itself</i>, who:</p> <p>1° has <i>publicly rejected</i> the Catholic faith;</p> <p>2° has celebrated marriage or attempted it, even if only civilly.</p>

Both codes speak of automatic dismissal, which a member incurs by the very fact that she/he committed an offence specified in the norm. Any professed religious, woman or man, cleric or lay, in perpetual or temporary vows, could be subject to this type of dismissal. Automatic dismissal protects the institute from the behaviour of members that is contrary to the very nature of consecrated life.¹³ CIC 1983 refers to this type of dismissal as *ipso facto* ("by the very fact"), whereas CCEO terms it *ipso iure* ("by the law itself"). Therefore, according to CIC 1983, *ipso facto* dismissal is applied because of the fact, *ex facto*. In accordance

¹¹Some authors, like Dimitrios Salachas and Pio Vito Pinto, recognize three categories of dismissal in CCEO, namely *ipso iure*, *ex officio* (dismissal must be preceded by a decree), and facultative. P.D. Salachas, "La vita monastica e religiosa nel *Codex canonnum Ecclesiarum Orientalium*," *Euntes Docete* 18 (1995) 128; P. V. Pinto, ed., *Commento al codice del canoni delle Chiese orientali* (Città del Vaticano: Libreria Editrice Vaticana, 2001) 409.

¹²J. Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes* (Ottawa: Saint Paul University, 2008) 244.

¹³CIC provides the room to add expiatory penalties other than given in canons (c. 1336 §1). Hence, some authors like to regard *ipso facto* dismissal as expiatory penalty. In CCEO, no sanctions are given as 'expiatory penalties.' As a result *ipso iure* dismissal can never be considered as a penalty.

with CCEO, *ipso iure* dismissal is applied by the reason of the law. In both cases, dismissal occurs because of the nature of the offense committed, not because of the action of the superior. Two such offenses contained in both CIC 1983 and CCEO are (1) notorious defection from the Catholic faith (can. 694 §1, 1°) or public rejection of the Catholic faith (CCEO c. 497 §1, 1°); and (2) attempted or contracted/celebrated marriage. These causes “go against the essential element of consecration without which the religious life is impracticable and inconceivable.”¹⁴

a. Notorious Defection from the Catholic Faith (c. 694 §1, 1°) or Public Rejection of the Catholic Faith (CCEO c. 497 §1, 1°)

Both codes refer to defection from the Catholic faith, not from the Catholic Church. Although it is difficult to differentiate between the two, it is still theoretically possible to defect from the faith without defecting from the Church. The term “Catholic faith” is difficult to interpret because of its broadness. According to traditional understanding, it includes the elements of actual and visible communion.¹⁵ Nevertheless, defection from the Catholic faith cannot be identified with heresy, schism, or apostasy; it is not an obstinate denial of the Catholic faith, a total repudiation of Christian faith, a refusal to submit to the Supreme Pontiff, or of communion with the members of the College of Bishops. Defection from the Catholic faith may lead to heresy, apostasy, or schism, but not always. At times, defection from the Catholic faith becomes more serious than these offenses.¹⁶ It can be ‘notorious’ or ‘public,’ which can be understood as defection known to the community or at least likely to become known,

¹⁴V. G. D’Souza, “Automatic Dismissal of the Religious from the Religious Institute on the Ground of Marriage,” *Studies in Church Law* 6 (2010) 447.

¹⁵J. Jukes, “Dismissal of a Religious,” in *Canon Law Society Great Britain & Ireland Newsletters* 66 (1985) 9.

¹⁶Some authors hold the view that *sodalis qui a fide catholica notorie defecerit* includes those who adhere to apostasy, heresy and schism. Refer to D. J. Andrés, *Il diritto dei religiosi, commento esegetico al Codice*, 2nd ed. (Roma: Editiones Instituti Iuridici Claretiani, 1996) 631-632; V. De Paolis, *La Vita Consacrata nella Chiesa* (Venezia: Marcianum Press, 2010) 577; J. Beyer, *Le Droit de la Vie Consacrée* (Paris, Tardy: 1988) 195. They hold this opinion because of the historical evolution of this canon (CIC 1917 c. 646 §1 and PA c. 197 §1).

and which can be proven in a legal forum. Defection from the Catholic faith is established as notorious/public when one's abandonment of the faith can be proven juridically.

b. Attempted or Contracted / Celebrated Marriage

Life consecrated through profession of the evangelical counsels in the form of vows or other sacred bonds is central to consecrated life. From the first century onwards, the intense desire and thirst for the observance of chastity was integral to a life of commitment, which imposed the obligation to avoid sin contrary to the sixth and ninth commandments and to renounce matrimony. From the very beginning of religious life, the Church considered religious life and marriage incompatible. This is evident from the historical evolution of dismissal.¹⁷ Therefore, following the sacred traditions, in *CIC* c. 694 §1, 2° and *CCEO* c. 497 §1, 2° the legislator imposes *ipso facto/ipso iure* dismissal on those who contract/celebrate or attempt marriage, even if only civilly.

If one who is bound by a public perpetual vow of chastity or who is in sacred orders contracts a civil marriage, it is considered an "attempted" marriage because it has no canonical effect. Since both possibilities exist, the canon addresses both "contracted/celebrated" and "attempted" marriages. The first and most important canonical effect of the vow of chastity is the impediment to contract matrimony validly. A religious who contracts/celebrates or attempts marriage must be dismissed by the very fact she/he has committed the offence. Nevertheless, a religious who enters into marriage or attempts to thereby places herself/himself in a situation incompatible with religious profession. Therefore, the very commission of this crime occasions the member's automatic dismissal without any action by the superior.

4. 2. Obligatory Dismissal

***CIC* c. 695: §1.** A member must be dismissed for the *delicts* mentioned in cc. 1397, 1398, and 1395, unless in the *delicts*

¹⁷Various ecumenical and particular councils have tried to make norms against those monks who despise the vow of celibacy. Finally, a clear legislation came into effect in the Council of Lateran II (1139). In canon 7, the Council vehemently emphasized that one who lives in concubinage, whether cleric, deacon or monk, is to be deposed.

mentioned in c. 1395, §2, the superior decides that dismissal is not completely necessary and that correction of the member, restitution of justice, and reparation of scandal can be resolved sufficiently in another way.

The second type of dismissal, often called mandatory or required dismissal, is addressed only in can. 695 of *CIC*. It has no parallel canon in *CCEO*. The causes referred in c. 695 are *delicts* taken from Book VI of the code. The offences or crimes mentioned in can. 695 §1 are serious violations against human life and liberty that also bring infamy to the institute. The causes which oblige superiors to dismiss religious are found in c. 1397, namely homicide, fraudulent or forcible kidnapping, detention, mutilation, or serious wounding of a person; c. 1398, an abortion actually procured; and c. 1395, concubinage, or persisting in another external sin against the sixth commandment which produces scandal. Canon 695 §1 states that the major superior is to apply c. 1395 §2 at her/his discretion.

The *delicts* mentioned in can. 695 §1 can be categorized into (1) offences against the sixth commandment or against the vow of chastity (living in concubinage) and (2) offences against human life and freedom (homicide, kidnapping, mutilation, and procuring a completed abortion). Canon 695 is obligatory, mandating the superior to dismiss the religious upon the latter's commission of these offences (*sodalis dimitti debet*). A superior must seek proof that the member committed the forbidden action before dismissing her/him, provided that all the requirements of law that define the elements of a *delict* are verified in a given case. The *delicts* depicted in c. 695 §1 are:

- Homicide - includes malicious or intentional taking of life directly or indirectly, personally or *in solidum*, or in collaboration with a third person.¹⁸
- Kidnapping - is the violent seizure or detention of a person. The detention implies holding a person for any reason; the motive for detention is irrelevant. Furthermore, because the canon does not specify the gender or age of the person, the one kidnapped could be a male or female child, a youth, or an elderly person.

¹⁸D. J. Andrés, *Le forme di Vita Consacrata, commentario teologico-giuridico al Codice di diritto canonico*, 6th ed. (Roma: Edizioni Istituto Giuridico Claretiano, 2008) 667.

- Mutilation - Mutilation or grave wounding denotes serious violations of bodily integrity. It includes any action that either temporarily or permanently impairs the natural and complete integrity of the body or its function.¹⁹
- Procured_abortion - The code does not explicitly define abortion. It is to be understood as “the killing of the fetus in whatever way it may be procured or at whatever time from the moment of conception.”²⁰
- *Delicts_against* the Sixth Commandment - Canon 1395, which is mentioned in can. 695 §1, has to be seen in the context of the obligation of religious to observe perfect and perpetual continence. The canon seems to penalize the violation of this particular obligation, not of chastity in general. Any external behaviour which could endanger the perfection of continence is within the scope of this canon.²¹ Canon 1395 §1 addresses concubinage and an enduring scandalous situation involving a sin against the sixth commandment. Concubinage is a stable sexual relationship with a person of the opposite sex outside of marriage.

Canon 695 §1 allows a competent religious superior to refrain from dismissing a member for the *delicts* mentioned in c. 1395 §2 under certain circumstances. Canon 1395 §2 addresses sexual offences perpetrated publicly, with force or threats, or with a person under

¹⁹T. Pazhayamapllil, *Pastoral Guide*, Vol. 2 (Bangalore: Kristu Jyoti Publications, 2004) 1042.

²⁰Pontificia Commissio Codici Iuris Canonici Authentice Interpretando, Responsiones ad proposita dubia, *Utrum abortus*, 19 January 1988, in AAS 80/2 (1988) 1818. In recent years there was confusion about the concept of procured abortion. As a result, the Congregation for the Doctrine of the Faith issued a doctrinal statement restating the Church’s teaching: “In this regard, the Congregation for the Doctrine of the Faith reiterates that the Church’s teaching on procured abortion has not changed, nor can it change. This teaching has been presented in numbers 2270-2273 in the Catechism of the Catholic Church,” The Congregation for Doctrine of the Faith, “Clarification on Procured Abortion,” 11 July 2009, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rconcnfaith_doc_2009_0711_aborto-procurato_en.html (accessed on 9 March, 2014).

²¹J. H. Provost, “Offences against the Sixth Commandment: Toward a Canonical Analysis of Canon 1395,” *The Jurist* 55 (1995) 661-662.

sixteen years of age. The original wording of the canon prescribes only just penalties for these offenses; however, some are now considered ‘grave delicts’ (*delictum gravius*) following the promulgation of *Sacramentorum sanctitatis tutela* in 2010.²² The *Normae* given by the Congregation for the Doctrine of the Faith (art. 6) treats such an offence as *delictum gravius*.²³ The document specifies that a cleric who commits such a *delict* could even be dismissed from the clerical state. All clerics, including religious, fall within the scope of this document.

4.3. Facultative Dismissal

CIC	CCEO
<p>C. 696: §1. A member can also be dismissed for other causes provided that they are <i>grave, external, imputable, and juridically proven</i> such as: habitual neglect of the obligations of consecrated life; repeated violations of the sacred bonds; stubborn disobedience to the legitimate precepts of superiors in a grave matter; grave scandal</p>	<p>C. 500: §1 To dismiss a member in perpetual vows, with due regard for can. 497,</p> <p>§2 In addition to other conditions that may be established <i>in the typicon</i>, to decide validly on dismissal it is required that:</p> <p>1° the causes for dismissal be <i>grave, culpable and juridically proven</i> along with a lack of</p>

²²John Paul II, *motu proprio Sacramentorum sanctitatis tutela*, 30 April 2001, in AAS 93 (2001) 737-739. The text of the Norms on delicta graviora currently in force is the text approved by the Holy Father Benedict XVI on 21 May 2010. Congregatio pro Doctrina Fidei, *Normae de delictis Congregationi pro Doctrina Fidei reservatis seu Normae de delictis contra fidem necnon de gravioribus delictis*, 21 May 2010, in AAS 102 (2010), pp. 419-430. The norms of the *motu proprio* have force and prevail over the code. In other words, this norm derogates from the general norm given in the 1983 code by virtue of the new norm’s pontifical authority. It is valid for both Latin and Oriental Catholics.

²³The *delict* against the sixth commandment of the Decalogue committed by a cleric with a minor, with a person who habitually lacks the use of reason, or who is below the age of eighteen years (*Normae de delictis contra fidem necnon de gravioribus delictis*, art. 6 §1, 1°). This *delict* includes all violations against the sixth commandment of the Decalogue. Therefore, “paedophilia, ephedophilia, homosexuality or heterosexuality,” all come under *delictum gravius*. Article 7 §2 prescribes, in the *delict* mentioned in article 6 §1, 1°, that prescription begins to run from the day on which a minor completes her/his eighteenth year of age.

arising from the culpable behavior of the member; stubborn upholding or diffusion of doctrines condemned by the magisterium of the Church; public adherence to ideologies infected by materialism or atheism; the illegitimate absence mentioned in can. 665, §2, lasting six months; other causes of similar gravity which the proper law of the institute may determine.	reform;
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The third type of dismissal is called facultative or discretionary. *CIC* c. 696 §1 lists the grounds for which a member may be dismissed, whereas *CCEO* does not. As its name suggests, this type of dismissal is imposed at the discretion of the superiors of the institute and other ecclesiastical authorities.

CIC c. 696 §1 requires that an offense leading to a facultative dismissal be grave (*graves*), external (*externae*), imputable (*imputabiles*) and juridically proven (*iuridice comprobatae*). Legal imputability entails *dolus* and *culpa* (*CIC* c. 1321), which are also addressed in the procedure for facultative dismissal. *CCEO* c. 500 §2 states that in order to decide whether dismissal should be applied, the causes must be grave (*graves*), culpable (*culpabiles*), and juridically proven. Although *CCEO* c. 500 §2 does not explicitly require externality, this requirement is implicit in the phrase “juridically proven.” ‘Imputability’ in *CIC* and ‘culpability’ in *CCEO* are identical in their content. Both terms presuppose the responsibility of the accused. Moreover, both codes recognize that the behaviour in question must be stubbornly repeated without demonstrated reform. The behaviour must be proven juridically so that its occurrence and its seriousness may be verified.

Even though their wording differs slightly, in both codes the legislator intends that an individual must be juridically and morally responsible for the action in question for him or her to be subject to a facultative dismissal. In other words, the actor is considered responsible if she/he has acted with knowledge and free will. Imputability or

culpability is therefore perceived as an attribution of a particular act to a particular person or persons in the external forum.²⁴

CIC c. 696 §1 gives seven broad categories of causes for facultative dismissal. These more generic causes touch upon essential areas of religious life, its public witness, and its ecclesial communion. The causes enumerated in can. 696 §1 are:

- Habitual neglect of the obligations of consecrated life: The canon emphasizes generically ‘the obligations of consecrated life,’ a specified list of which would be impossible to enumerate.
- Repeated violations of the sacred bonds: This concerns not only behavior contrary to the three evangelical counsels, but also violations of other bonds that the institute holds as sacred and which oblige its members.
- Stubborn disobedience to the legitimate prescripts of superiors in a grave matter: Here, disobedience is to the superior (*Superiorum*), not to the institute’s rule or constitutions. The disobedience must be obstinate and the matter must be grave.
- Grave scandal arising from the culpable behaviour of the member: A specific list of culpable behaviours is not found in the code. The canon clearly indicates that a single act leading to grave scandal suffices as a cause for facultative dismissal.
- Stubborn upholding or diffusion of doctrines condemned by the *magisterium* of the Church: Teachings of the *magisterium* include teachings of the Roman Pontiff, of the college of bishops together with the pope, of congregations of the Roman Curia whose doctrinal decrees are approved by the Roman Pontiff, etc.
- Public adherence to ideologies infected by materialism or atheism: The adherence must be public and there should be adherence on the part of the accused member.
- Illegitimate absence mentioned in c. 665, §2,²⁵ lasting six months: The religious are bound to live in their own religious houses through the disposition of the Superior. In order to dismiss a

²⁴C. Papale, *Il processo penale canonico: Commento al Codice di diritto canonico libro VII, parte IV*, 2nd ed. (Città del Vaticano: Urbaniana University Press, 2012) 20.

²⁵CIC c. 665 §2: A member who is absent from a religious house illegitimately with the intention of withdrawing from the power of the superiors is to be sought out solicitously by them and is to be helped to return to and persevere in his or her vocation.

member three elements must be taken into consideration: fact, duration, and the purpose for the absence.

The clause “other causes of similar gravity which the proper law of the institute may determine” indicates that *CIC* c. 696 §1 gives an illustrative, not exhaustive, list of possible reasons for dismissal. The causes enumerated in the canon reveal that the legislator wishes to avoid the arbitrariness that may result from leaving the matter entirely to an institute’s proper law. The causes illustrated in c. 696 §1 are concrete examples of how to protect the good of the institute and the Church.²⁶

CCEO does not give a list of possible causes like that found in *CIC*. Rather, it leaves the matter completely to the ‘typicon’ of each institute. However, c. 500 §2 stipulates that “in addition to other conditions possibly stipulated in the typicon, it is required for validity: that there is a lack of reform and the reasons for dismissal are grave, culpable and juridically proven.” These prerequisites indicate that a superior can initiate discretionary dismissal only for serious reasons. After giving due consideration to the possible causes given in *CIC* c. 696 §1, the typicon of each institute should include a list of causes that relate to the primary obligations of the public nature of consecrated life. The causes also should be based on the spirit and purpose of each institute.

Both *CIC* c. 696 §1 and *CCEO* c. 500 §2 establish that an offence must be verified in the external forum before the member is dismissed. Knowledge gained in the internal forum does not suffice. An offence becomes external when the proofs can be collected in the external forum and proven juridically. For proofs to be collected, the offence must occur in the physical world, not merely in the member’s own mind. The member must also be responsible for the offence, that is, he or she must realize its seriousness in relation to the member’s continued membership in the institute. The member must have committed the offence freely; having chosen to act despite legitimate

²⁶L. Sabbarese, “Esclusione, uscita e dimissione dei religiosi dall’Istituto,” *Euntes Docete* 64 (2011) 122.

contrary commands by a competent superior. The proofs must be solid and reliable.²⁷

5. Dismissal of the Temporarily Professed

CIC	CCEO
<p>C. 696: §2. For the dismissal of a member in temporary vows, even causes of lesser gravity established in proper law are sufficient.</p>	<p>C. 499: A member can be dismissed during temporary profession by the superior of the monastery <i>sui iuris</i> with the consent of the council according to can. 552, §§2 and 3, but, for validity, the dismissal must be confirmed by the eparchial bishop, or by the patriarch if particular law so establishes for monasteries situated within the territorial boundaries of a patriarchal Church.</p> <p>C. 552: §2. In deciding about the dismissal, in addition to other conditions that may be prescribed by the statutes, the following must be observed:</p> <p>1° the causes for dismissal must be grave, and on the part of the member, external and imputable;</p> <p>2° the lack of a religious spirit, which can be a cause of scandal to others, is a sufficient cause for dismissal if a repeated warning, along with salutary penance,</p>

²⁷G. Lobina, "La separazione di religiosi dall'Istituto," *Apollinaris* 61(1983) 132. Lobina uses alcoholics and drug addicts as examples of cases that would require special verification. According to Lobina, if a member who is an alcoholic or drug addict commits an offence, the member's imputability should be determined with the help of a medical report. If the act is the outcome of her/his alcoholic state, the member should not be punished with dismissal but in accord with their illness and diminished free will. For a more detailed explanation, refer to G. Lobina "La separazione di religiosi dall'Istituto," 132-133.

	<p>have been in vain; 3° the dismissing authority must have come to know the reasons with certainty, although it is not necessary that they be formally proven. Yet, they must always be made known to the member, granting the member full opportunity of self-defence, and the member's responses are to be faithfully submitted to the dismissing authority.</p>
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During temporary profession, a member can be dismissed by exclusion from subsequent profession or by dismissal while the temporary bond endures. A religious in temporary vows is incorporated into the institute for the duration of his or her vows. A member's obligation to live the vows according to the universal law and proper law or typicon of the institute for a prescribed period of time derives from her/his temporary profession. The time of temporary profession is a time of experiment and formation after which the member is free to leave.

CIC c. 696 §2 notes the following for a religious in temporary vows: "For the dismissal of a member in temporary vows, even causes of lesser gravity established in proper law are sufficient." Although temporarily professed members may be dismissed for less grave causes, the causes must be contained in the proper law of the institute; the superior cannot create new causes for each case.²⁸ However, *CCEO* c. 552 stipulates that in addition to the causes given for all religious, the lack of religious spirit, which can be a cause of scandal to others, could be regarded as sufficient cause for dismissal. The prerequisites given in c. 552 are noteworthy: it states that the reasons for dismissal of members in temporary vows must be grave, external, and imputable to the member. These conditions are in harmony with those in *CIC* c. 696 §1.

Many authors suggest possible causes of lesser gravity for the dismissal of the temporarily professed: lack of physical or psychic health, unsuitability for the life and works of the institute,

²⁸J.F. Castaño, *Gli istituti di vita consacrata*, p. 312.

responsibility for serious disharmony in community living, indecisiveness, a lack of aptitude for religious life, etc.²⁹ Because the temporarily professed are in a state of probation, dismissing them for causes of a less grave, less culpable nature is justifiable. CCEO allows a competent superior who is certain about a cause to dismiss a member even without the cause being formally proven; however, the code foresees such a dismissal only after a repeated admonition to amend the member's ways. The temporary character of their profession is the justifiable reason behind these additions for the dismissal of temporary profession.

6. Expulsion from the Religious House in Urgent Cases

CIC	CCEO
<p>C. 703: In the case of <i>grave external scandal</i> or of <i>most grave imminent harm to the institute</i>, a member can be <i>expelled immediately</i> from a religious house by the <i>major superior</i> or, if there is danger in delay, by the <i>local superior</i> with the consent of the council. If it is necessary, the major superior is to take care to begin a process of dismissal according to the norm of law or is to <i>refer the matter to the Apostolic See</i>.</p>	<p>C 498: §1. After divesting himself or herself of the monastic habit, a member, who is the cause of <i>imminent and most grave external scandal</i> or <i>harm to the monastery</i>, can be <i>expelled immediately</i> by the <i>superior of the monastery sui iuris</i> with the consent of the council,</p> <p>§2. The superior of the monastery <i>sui iuris</i>, if the case warrants, is to take care that <i>the dismissal process progresses in accord with the norm of law</i>, or <i>defer the matter to the authority</i> to which the monastery is subject.</p> <p>§3. A member expelled from the monastery who has received <i>a sacred order</i> is <i>forbidden to exercise the order</i> unless the authority to whom the monastery is subject has decided otherwise.</p> <p>C. 551 What is prescribed in cann. 497 and 498 concerning</p>

²⁹J. Gonzalez, "Basic Procedures Pertinent to Religious Institutes: Transfer, Exclaustration, Departure and Dismissal," *Philippine Canonical Forum* 5 (2003) 170.

	<p>dismissal or expulsion shall apply to all members of orders and congregations. However, the competent authority is the <i>major superior</i>, having consulted his or her council; or if it concerns expulsions, <i>with the consent of the same council</i>. If there is danger in delay and there is not enough time to approach the major superior, even <i>the local superior</i>, with the consent of his or her council, can expel a member, notifying the major superior immediately.</p>
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CIC c. 703 and CCEO cc. 498 & 551 establish a special situation for expulsion (*expulsionis*) from a religious house (*domo religiosa*)³⁰ without dismissal from the institute. Under these circumstances, the expelled member continues as a religious until either the supreme moderator, following due process, issues a decree of dismissal, or the Apostolic See or the ecclesiastical superior of the institute resolves the matter. The public nature of a member's actions may cause grave external scandal, which may damage both the institute and the faithful. The scandal in question should be 'extremely grave' and imply 'imminent harm' to the house or the institute. It should not only affect the members of the religious community but also have an impact beyond it. Both these characteristics must be present for the provisions of this canon to apply. While a member expelled from a house still belongs to her/his institute, CCEO c. 498 §3 establishes that "A member expelled from the monastery who has received a sacred order is forbidden to exercise the order unless the authority to whom the monastery is subject has decided otherwise."

The norm concentrates on the consequences of an act, not solely on its morality. Any religious, whether temporarily professed or perpetually professed, could be subject to expulsion from their religious house;

³⁰This is not a category of dismissal from the religious institute; however, expulsion may lead to further investigation and eventual dismissal.

however, only the subject who caused the danger could be expelled.³¹ *CIC* c. 703 and *CCEO* cc. 498 & 551 should be applied very rarely. The law's requirement that the dismissing authority have the consent of her/his council indicates that dismissal is not to be undertaken lightly. Even if the expulsion from the house is imposed by the local superior, the competent major superior, if required, can initiate dismissal. In other cases, the Apostolic See, patriarch/major archbishop, or diocesan bishop must be informed about the matter.

Conclusion

Dismissal from a religious institute happens infrequently. When it does, it occasions sadness and trauma for both the individual and his/her institute. Since the dismissal touches upon the very core of religious life, the consecration to God and juridical relationship between institute and the individual, this could rightly be called a therapeutic process.

This paper has attempted to draw attention towards the evolution of the concept of dismissal and to various motives for dismissal in the light of both *CIC* 1983 and *CCEO*. The concept of 'dismissal from religious institute' reveals the concern of the Church for those in religious life to live their vocations authentically. The norms specifically highlight the importance of this matter: acts which are isolated, concern less serious matters, involve mitigated imputability/culpability, or cannot be proven in the external forum do not suffice as causes for dismissal. The substantial norms for various categories of dismissal are the same for all religious institutes and for all religious, whether temporarily or perpetually professed. *CIC* c. 703 and *CCEO* cc. 498 & 551 establish a peculiar type of expulsion from a religious house while remaining incorporated into the institute. Under certain circumstances, expulsion may later lead to dismissal from the institute.

Because dismissal is a complex and delicate issue, the legislator cautions religious institutes to impose it only in cases that are verifiable juridically. Superiors enjoy discretion in this matter to assure the betterment of the community and fair treatment of the accused individual. This is underscored by the procedural norms for the dismissal, which resist any kind of arbitrariness in the practice. Having

³¹D. J. Andrés, *Le forme di vita consacrata ...*, p. 678.

seen the substantial norms that caused the dismissal in both codes, our study will continue in the next issue with procedural norms given in both *CIC* and *CCEO*.