

Editorial

Penal Laws in the Church

Despite the similarities that the Church community shares with the civil society, she is a special class or kind of community having a unique set of precepts, principles, rules, relationships and destiny. It is founded and is being led by the Lord Jesus Christ Himself and is ever guided by the Holy Spirit. Hence, one may ask what is the role and relevance of laws, rules and regulations, especially punishments and penal procedures in the Church.

Though the ecclesial community is distinct from the civil society by virtue of the spiritual values she holds on to and the eternal welfare she looks forward to, she shares many characteristic features of the civil society: order and harmony, respect for justice through the mutual acceptance of rights and obligations and so on, which are fundamentals for the well being of any community.

The Church community is constituted of weak, fragile and erring human beings. In spite of the human, natural and/or positive divine values as well as ecclesiastical and divine laws and structures for the good of the individuals as well as the community, there may be deviants who might do harm to the individuals themselves or to the Church Community as a whole, endangering even the very final goal itself of all the norms and regulations in the Church, namely, "the salvation of souls (which) is the supreme law in the Church" (CIC c. 1752).

Hence, in order to win back the erring sheep and to prevent disharmony and disorder in the Church community as a whole, the Church resorts to penal laws and procedures. Penal laws and procedures in the Church, however, are always aimed at helping

persons to return to the right path and respect the rights of others, that is, to do justice, giving to others what is their due. In other words, the most salient feature of penal laws and procedures in the Church, is its medicinal nature. In fact, the opening canon of CCEO, title XXVII enunciates it well: As “God employs every means to bring back the erring sheep, those who have received from Him the power to loose and to bind are to *apply suitable medicine to the sickness of those who have committed delicts, reproving, imploring and rebuking them with the greatest patience, and teaching*” (c. 1401). Those who have the care of the community and are entrusted with the responsibility are to employ necessary means to imitate God who “employs every means to bring back the erring sheep...” (c. 1401). The latter part of the canon further explains the need and purpose of enacting penal laws in the Church: “... they are even to impose penalties *in order to heal the wounds caused by the delicts, 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.*”

The Church, at present, passes through a tough time. From within and from outside she faces many challenges and difficulties. The Church undergoes persecutions in one way or other in many parts of the world and similarly she becomes an object of scandal many a time. For example, pedophilia is an issue that has been taunting the Church. Therefore, in order to prevent such kinds of deviant behaviours and to win back the sinful and erring sheep the Church resorts to penal laws and procedures. The present issue of *Iustitia*, therefore, is dedicated mainly to deal with the penal laws and penal procedures in the Church and their various aspects.

Msgr. Charles J. Scicluna, the promoter of justice of the Congregation for the Doctrine of Faith, addresses one of the most burning issues that affects the Church, namely pedophilia and its various aspects under four main heads in his article, “The Impact of Pedophilia: Crisis on the Universal Church.” He explains that ‘Sexual Abuse of Minors by Clerics is a Grave Violation of Divine Positive and Ecclesiastical Law.’ He further shows how ‘Sexual Abuse of Minors

by Clerics is a Tragic Wound to the Church.’ After dealing with ‘Truth as the Basis of Justice’ in connection with pedophilia the author points out ‘The Role of the Catholic Church in the Prevention of Sexual Abuse of Minors.’

James Mathew Pampara, an expert in the penal law and penal procedures, gives in his article “Characteristic Features of Penal Law in the Code of Canons of the Eastern Churches,” an account of the reduction of ‘*latae sententiae*’ penalties in CIC 1983 in comparison with the previous Latin Code and the total ‘Abolition of *latae sententiae* Penalties in CCEO’ is presented as an important feature of the Oriental Code. He also explains how ‘The Principle of Strict Legality’ which was ‘an important principle in secular penal law according to which no one can be punished who has not violated a penal law or a penal precept which already exists,’ finds expression in the Church ‘in the formula *nulla poena sine lege poenali praevia*.’ Besides ‘the medicinal character of penalties in CCEO’ the author treats also the reserved sins and the concept of imputability.

With his expertise in the Indian Civil Law and in Canon Law Davis Panadan attempts a comparison between the ‘Medicinal Character’ in the penal process of CCEO and ‘Fair Trial’ in the Criminal Procedure Code of India. The author tries to find a ‘medical colouring’ in the penal laws of the CCEO and in the ‘Fair Trial’ of the criminal procedural law of India. He also attempts to see in a comparative manner how CCEO and CrPC present the right of the accused for good reputation, for self defence, and making recourse, if need be.

Msgr Paul Pallath examines the principle of territoriality from a historical and juridical perspective based on the Church documents and the presence of the Latin Church in the entire world and that of the Eastern Churches in the Western territories. The author’s exposition of the principle of territoriality begins with the “Sacred Canons” and going through the Second Vatican Council and the revision process, ends in the present CCEO. He discusses also the

legislative power of the Synod of Bishops and its role in the administration of justice. In connection with the principle of subsidiarity he also deliberates on the appointment of bishops outside the territory and the possibility for the extension of territorial boundaries.

In his article on 'Considerations on Bishop Emeritus' George Gallaro presents the juridical notion of Bishop Emeritus clarifying it with an analogy between Bishop Emeritus and Jubilarian. Having discussed the Episcopal Order and the Condition of Emeritus the author traces the origin and development of the figure of Bishop Emeritus and shows how CIC and CCEO come out with the category of Bishops Emeriti. He also presents the various rights and duties that the Bishops Emeriti have in relation with the hierarchy at various levels.

As an expert of Oriental Canon Law, especially in the field of the constitution of the Church and its governance, Archbishop John D. Faris examines "the institutions of the Eastern Catholic Churches to demonstrate how their governance structures are an interesting interweaving of governance by one and governance by many." The author systematically presents the synodal system of governance in the patriarchal and Major archiepiscopal Churches and the council of hierarchs in the Metropolitan Churches *sui iuris*, without neglecting at the same time the system of administration in Other Churches *sui iuris*. He deals also with the various other bodies like Metropolitan and Eparchial assemblies and pastoral councils which help the hierarchs in the administration.

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