

CANONICAL ASPECTS OF EXCLAUSTATION: A COMPARISON OF CIC cc. 686 - 687 and CCEO cc. 489-491 and 548

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CCEO c. 410 describes the religious state as a stable mode of common life in an institute approved by the Church. Common life is one of the essential characters of religious state. Every religious is committed to reside in his or her own religious community. However, at times, a religious may find himself or herself unable to fulfill sincerely this commitment or at times, the institutes may find difficult with a member when his or her life brings serious harm to the life of the community. The canonical provision, called exclaustation, a temporary separation from the religious community, is a feasible and realistic solution for such difficult and extraordinary situations in religious life. The various canonical norms, articulated in both Codes regarding this provision are presented in a comparative manner in this article.

Introduction

Religious life is a gift to the Church and a call to an individual from God. It is a call to follow Christ more closely under the action of the Holy Spirit and to dedicate oneself totally to God (CIC c. 573 §1). It is to be a sign of holiness and to live in the communion of God and of men and women. It is accomplished through a stable manner of living in common in an institute under the authority of a superior observing

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the evangelical counsels of chastity, poverty, and obedience (CIC c. 573; CCEO c. 410). Every religious enters this state of life with the hope of leading a life as stated above assuming all the obligations and commitments attached to this call. However, in his or her journey of life, a religious may find himself or herself unable to fulfill sincerely the commitments and obligations of religious life, may be because of personal reasons or because of some external factors. On the other hand, some times the institutes may find problems with some peculiar life of a member so much so that he or she becomes a danger to the life of the community. Sometimes, a religious may fail to manage his or her life as per the expectations of the Church or the institute. With a provision of temporary separation from the religious community—called exclaustation—the Church, with maternal solicitude, offers a feasible and realistic solution for such difficult and extra-ordinary situations in the life of a religious. The codes of canon law provide sufficient universal or common norms for this canonical institution of exclaustation (CIC cc. 686-687; CCEO cc. 489-491 and 548). Many dissertations, good number of articles, and excellent commentaries are made on this topic. However, I think, we still lack a positive approach to this canonical provision and often we give little attention to its possibilities. Here I would like to present the canonical aspects of this institution found in both Codes as an attempt to invite your attention to these possibilities, which may be helpful for all interested in this field, especially the religious.

1. Exclaustation: Meaning

Connected to common life in religious institutes, exists the fact of cloister (CIC c. 667; CCEO cc. 477 §1 and 541). Cloister refers both to the law which regulates the separation of religious from those outside the religious house and to the actual space of enclosure, that is, the space set aside for the exclusive use of the religious.¹ Both “cloister” and “exclaustation” are derived from the same Latin root, *clausura*, *clausurae* (f), meaning “walls” or “enclosure.” *Ex clausurā* means “from or out of the cloister” or “from or out of the enclosure.” Through exclaustation a religious is allowed to remain “extra clausura.” It can be described as the state of “living outside a religious community, with

¹ Rosemary Smith, “Institutes of Consecrated Life and Societies of Apostolic Life,” in *New Commentary on the Code of Canon Law*, ed. John P. Beal, James A. Coriden and Thomas J. Green, (Bangalore: Theological Publications in India, 2003) 833.

permission granted by legitimate authority, during which the exclaustrated religious remains a member of the institute but with some alteration of the canonical relationship between the individual religious and the religious institute."²

Though it is included in the section of "departure," exclaustration is not a departure from the religious life but it is a partial and temporary separation from the institute, to which a religious belong, and that the religious can resume normal religious life in the community later.

2. Types of Exclaustration

Both CIC and CCEO indicate two types exclaustration: "voluntary exclaustration," and "imposed or involuntary exclaustration." However, based on the practices in the Universal Church, canonists identify other types of exclaustration, especially the following two: (1) "Qualified exclaustration," and (2) "Exclaustration *ad experimentum*."³

Both, "qualified exclaustration," and "exclaustration *ad experimentum*," are applicable to religious clerics in very particular circumstances. The first one is applicable to religious priests, who are "experiencing a vocational crisis or have grown weary of priestly life,"⁴ and request for reduction to the lay state. In such situation, an indult of exclaustration would be granted with special effects beyond those that are common to every exclaustration.⁵ In this case, the indult essentially suspends the observance of the vows except chastity and deprives the priest of the right to exercise the priestly functions.⁶

Exclaustration *ad experimentum* is the status of a religious priest who seeks to be incardinated in a diocese. When a diocesan bishop receives a religious priest on probation, it is possible for the priest to ask for an indult of exclaustration for the entire probationary period. Until he is being incardinated into the diocese, the religious priest, is considered

² Patrick T. Shea, "Exclaustration," *CLSA Proceedings* 59 (1997) 267.

³ Madeleine Ruessmann, *Exclaustration: Its Nature and Use according to Current Law* (Rome: Pontificia Università Gregoriana, 1995) 19; Elizabeth McDonough, "Exclaustration: Canonical Categories and Current Practice," *The Jurist* 49 (1989) 596-605; Patrirk T. Shea, "Exclaustration," 268-271.

⁴ Patrirk T. Shea, "Exclaustration," 270.

⁵ Jesus Torres, "Procedure for the Exclaustration of a Religious," *Consecrated Life* 18, 1 (1993) 57.

⁶ Patrirk T. Shea, "Exclaustration," 270.

to be on exclaustation. It ceases upon the grant of incardination or the return of the priest to the institute.⁷

In this study, we focus only on the general categories of exclaustation, provided in the Codes: voluntary exclaustation and imposed or involuntary exclaustation.

2.1. Voluntary Exclaustation

CIC c. 686 §1,2 and CCEO cc. 489 and 548 provide for exclaustation, not imposed, but commonly called as “voluntary” or “ordinary” exclaustation.

<p>CIC c. 686 §1 With the consent of the council, the supreme moderator for a grave cause can grant an indult of exclaustation to a member professed by perpetual vows, but not for more than three years, and if it concerns a cleric, with the prior consent of the ordinary of the place in which he must reside. To extend an indult or to grant it for more than three years is reserved to Holy See, or to the diocesan bishop if it concerns the institutes of diocesan right.</p> <p>§2 Only the Apostolic See can grant an indult of exclaustation for nuns.</p>	<p>CCEO c. 489 §1 The indult of exclaustation can be granted only to a member of a monastery <i>sui iuris</i> who is in perpetual vows. When the member himself or herself petitions, the indult can be granted by the authority to whom the monastery is subject, after having heard the superior of the monastery <i>sui iuris</i> along with the council.</p> <p>§2 The eparchial bishop can grant the indult only for up to three years.</p> <p>c. 548 §1 An indult of exclaustation can be conceded by the authority to which the order or congregation is subject, having heard the superior general along with his or her council.</p> <p>§2 In other respects, cann. 489-491 are to be observed regarding exclaustation.</p>
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2.1.1. Voluntary: At the Request of the Member

CCEO c. 489 §1 (Monasteries) explicitly states that “the member himself or herself” can petition for an indult of exclaustation. Whereas CIC c. 686 §1 is silent about the author of the petition.

⁷ Patrirk T. Shea, “Exclaustation,” 271.

However, it is clear from the content of these canons that the indult is granted at the request of the member. A religious may make a formal request to live outside the cloister, to the competent authority.

2.1.2. Only Perpetually Professed Members

The indult of exclaustration is granted to perpetually professed members, according to both codes. It is through perpetual profession a person become a full and permanent member of the religious institute.

The law (CIC c. 686 §1; CCEO cc. 489, 548) restricts exclaustration to the perpetually professed members of a religious institute. Exclaustration is not available to the temporary professed members because it is neither appropriate nor necessary to grant indult of exclaustration to them. The reason is that they are still in the process of formation to make perpetual profession. It is a period during which the religious learns to live the religious life of the institute in the community; a period in which the religious and the institute must discern the religious' vocation to that life. Therefore, there is an incompatibility between the period of temporary vows and exclaustration.⁸ In addition, a temporary professed religious is free to leave the institute at the expiry of his/her vows (CIC c. 657§1). He or she can also request for an indult to leave the institute, by which he or she can totally separate from the institute at any time (CIC c. 688 §2; CCEO cc. 496 and 546).⁹

2.1.3. Indult of Exclaustration: A Favour

An indult, canonically speaking, is in the category of administrative acts, and is considered as a favour. A favour (*gratia*) granted at someone's request and is communicated in a written response is called a rescript, which is an administrative act (CIC cc. 35, 59 §1; CCEO cc. 1510 § 2, 3^o). An indult has the form of a rescript. A formal indult has to be in writing and in the proper form, specifying the request, the motive, the fulfilment of the required conditions, specification of the time, the obligation and the right to return, other obligations, etc.¹⁰

⁸ Jesus Torres, "Procedure for the Exclaustration of a Religious," 52.

⁹ Elizabeth McDonough, "Voluntary Exclaustration," *Review for Religious* 51 (1992) 463.

¹⁰ Jesus Torres, "Procedure for the Exclaustration of a Religious," 53.

Since the indult of exclaustation is a favour, in the strict sense, the person requesting an indult does not have a right to receive it.¹¹ It is rightly observed that in the codes the canons on exclaustation are "in the section on departure and not that of obligations and rights of institutes and their members."¹² It is a favour granted by the competent authority.

2.1.4. The Competent Authority to Grant the Indult in the Latin Code

Regarding the competent authority to grant an indult of exclaustation to a perpetually professed member, there is a significant difference between the Latin and the Eastern codes.

In the religious institutes of the Latin Church, voluntary exclaustation can be granted by the supreme moderator of the religious institute, the diocesan bishop, or the Apostolic See. The determination of the grantor depends on the following elements: (1) the period or term of the exclaustation requested, and (2) the juridical status of the institute.

i). The Supreme Moderator: In general, the supreme moderator of a religious institute is competent to grant an indult of exclaustation to a perpetually professed member of his or her institute for not exceeding three years (CIC c. 686 §1). An exception to this general rule, as established in the universal law itself, is that, for nuns only the Apostolic See can grant an indult of exclaustation.

ii). The Diocesan Bishop: If the requested exclaustation is for more than three years, the diocesan bishop is the competent authority to grant the indult to the members of religious institutes of diocesan right. Here the canon does not specify the "diocesan bishop." According to F. J. Ramos, "Keeping in mind the interpretation of the corresponding canons of CIC 1917 (c. 638) and cc. 688 §2 and 700 [of CIC 1983], we infer that it is the bishop whose diocese contains the house to which the person is assigned or attached."¹³

iii). The Apostolic See: For the members of religious institutes of pontifical right, if the exclaustation is requested for more than three years, it is the Apostolic See, who is competent to grant it.

¹¹ Elizabeth McDonough, "Communicating an Indult of Departure," *Review for Religious* 51 (1992) 783.

¹² Patrick T. Shea, "Exclaustation," 268.

¹³ F. J. Ramos, "Departure from the Institute: cc. 686-693," in *Exegetical Commentary on the Code of Canon Law*, ed. Angel Marzoa, Jorge Miras and Rafael R. Ocana, vol. II/2, (Montreal: Wilson & Lafleur, 2004) 1840-1841.

As stated above, according to CIC c. 686 §2, the Apostolic See alone can grant an indult of exclaustration for nuns. The rationale for this reservation, probably, is that monastic nuns have an enclosure much more stricter than that of other religious (CIC c. 667 §§3-4). The canon applies to all nuns, whether belonging to the monasteries wholly devoted to the contemplative life or belonging to other monasteries.

2.1.5. Conditions Attached to the Supreme Moderator's Power to Grant the Indult

CIC 1983 empowers the supreme moderators of the religious institutes to grant an indult of exclaustration, a power that had been reserved to the Holy See or the local ordinary in the previous code (CIC 1917 c. 638). Considering the gravity of the matter, the canon establishes four conditions in the exercise of this power: (1) prior consent of the council; (2) grave reason; (3) only for a period not exceeding three years, and (4) if it concerns a cleric, prior consent of the Ordinary of the place where the cleric must reside.

First of all, the supreme moderator can issue an indult of exclaustration only with the consent of his or her council. The supreme moderator cannot grant it, if the said consent has been denied (cf. CIC c. 127 §2, 1°; CCEO c. 934 §2, 1°). If the supreme moderator issues the indult without the consent of the council, it will be invalid (cf. CIC c. 127 §2; CCEO c. 934 §2).

Secondly, the canon demands that there should be a grave reason to request for and to grant the indult of exclaustration. The evaluation of the gravity of the cause is the competence of the superior, who is entitled to grant the indult, and also of the council giving its consent. There must be an objectively grave reason.¹⁴ According to J. Torres, "a too benign evaluation leads invariably to a confusion of ideas and

¹⁴ The reason for granting the indult cannot be simply a personal dispute between superiors and an individual religious or any other matter that could be handled through dialogue. Elizabeth McDonough says that the grave cause is not a matter of validity but of licity. Elizabeth McDonough, "Separation of Members from the Institute," in *A Handbook on canons 573-746*, ed. J. Hite, Sharon Holland, D.Ward (Collegeville, 1985) 236. Chiapetta states that, grave cause is required as a matter of validity; he observes that permission for absence requires a just cause, while exclaustration requires a grave cause, and adds that exclaustration involves a more serious matter in that it often leads to an indult of departure. L. Chiapetta, *Il Codice di Diritto Canonico*, vol. 1, (Napoli: Edizioni Dehoniane, 1988) 786-787.

makes religious government difficult."¹⁵ The code does not mention any of the possible grave causes. Commentators list a variety of examples of the "grave causes," such as, care of personal health, care or support of one's parents, a vocational crisis and discernment, an external apostolate, etc.¹⁶

Thirdly, the supreme moderator cannot issue such an indult for more than three years. According to J. Torres, "the limit is not imposed on the exclaustation but on the power of the superior general to grant it."¹⁷ For a period exceeding three years, it is necessary to have recourse to the Apostolic See for the members of pontifical institute and to the diocesan bishop for the members of diocesan right. Here, it shall be noted that the wording of CIC c. 686 §1 has produced differing opinions among canonists regarding whether an initial indult granted for less than three years can be extended by the supreme moderator for a total duration of three continuous years.¹⁸ The observation of Elizabeth McDonough seems relevant to this question: "While the Latin text of the canon is not entirely clear, recent practice indicates that three continuous years in any combination of consecutive time

¹⁵ Jesus Torres, "Procedure for the Exclaustation of a Religious," 67.

¹⁶ Joseph F. Gallen, *Canon Law for Religious* (New York: Alba House, 1983) 193; George V. Lobo, *New Canon Law for Religious*, (Bombay: St. Paul Publications, 1986) 123; Gianfranco Ghirlanda, *Il diritto nella Chiesa mistero di comunione*, (Milano: Edizione San Paolo, 1993) 207; E. Gilbert, "Separation from Religious Institutes," *The Jurist* 44 (1984) 456-468, 460; Elizabeth McDonough, "Exclaustation: Canonical Categories and Current Practices," *The Jurist* 49 (1989) 585.

¹⁷ Jesus Torres, "Procedure for the Exclaustation of a Religious," 53.

¹⁸ Commentators, like D. J. Andres and J. Beyer, have interpreted the words of the canon "Extending the indult or granting it for more than three years is reserved to the Holy See," in the strict, literal sense, affirming that any kind of a prolongation is reserved to the Holy See or to the bishop. But according to the majority, the practical interpretation of the prescription on the basis of the constant praxis of the Apostolic See points out that the supreme moderators are accorded with the faculty to grant an exclaustation up to three years, either in one single grant or better in concessions for a shorter time to keep the exclaustated in contact with the institute. Jesus Torres "Procedure for Exclaustation of a Religious," (note 26) 68; Patrick T. Shea, "Exclaustation," 269; Madeleine Ruessmann, "Aspects of Exclaustation," *Periodica de Re Canonica*, 84 (1995) 239; Elizabeth McDonough, "Voluntary Exclaustation," *Review for Religious*, vol. 51/3 (1992) 465.

segments is the limit intended and also permitted by canon 686 §1, as being within the competence of the supreme moderator."¹⁹

Lastly, CIC c. 686 §1 establishes a special condition to be fulfilled by the supreme moderator in granting the indult of exclaustration to a religious, who is a cleric. The canon demands that, "in the case of a cleric, the indult requires the prior consent of the Ordinary of the place where the cleric must reside." The following two factors would be the rationale for this condition: first, such a cleric would be practically outside the religious governance of his own superior; and secondly, as a cleric he would perform public ministry, which is under the supervision of the local ordinaries. The supreme moderator is bound to seek this consent, for the validity of his action.

2.1.6. The Competent Authority to Grant the Indult of Exclaustration in CCEO

In the Eastern code, the competent authority to grant the indult of exclaustration upon the petition of a member in perpetual vows is the authority to whom the religious institute is subject (CCEO cc. 489 §1, 548 §1). Corresponding to the hierarchical structure of the Eastern Catholic Churches, the religious institutes can be of eparchial, patriarchal (major archiepiscopal) and pontifical. Therefore, the eparchial bishop, patriarch (major archbishop) and the Apostolic See are the authorities who can grant the indult of exclaustration in the Eastern Churches depending on whether the member petitioning for exclaustration belongs to a religious institute of eparchial, patriarchal (major archiepiscopal) or pontifical right. Unlike the Latin code, the Eastern code gives no power to the superiors general of religious institutes to grant the indult of exclaustration of any length.²⁰

¹⁹ Elizabeth McDonough, "Voluntary Exclaustration," 465.

²⁰ The previous laws, CIC-1917 c. 638 and PAL c. 188, had the same rule that the See granted the indult of exclaustration in institutes of pontifical right while the local ordinary (hierarchy) granted it in institutes of diocesan (eparchial) right. In the revision of the Latin Code (1977 Schema c. 77), it was proposed that the supreme moderator of a religious institute, for a grave reason and having heard the council, could grant such an indult for up to three years. Though there were some objections against this proposal with the arguments that conferring such faculty to the supreme moderator would lend itself to abuses it has no basis in the *ius vigens*. It was pointed out that the canon requires "the consent of the council and also, if it is a question of priests, the consent of the ordinary of the place where the religious will

2.1.7. Conditions in Granting the Voluntary Exclaustration in CCEO

As seen above, in CIC c. 686 §1, the power of a supreme moderator to grant an indult of exclaustration is conditioned by four factors. These factors are not found in the parallel Eastern norms. On the contrary, the Eastern code states that the authority to which the monastery, order or congregation is subjected to, concedes the indult of exclaustration after having heard the superior of the monastery *sui iuris* along with the council, or the superior general of the order or congregation along with his or her council (CCEO cc. 489 §1, 548 §1). The external hierarchical authorities can grant this only after having heard the internal highest superior of the institute along with his or her council.

Another condition found in the Eastern Code in this regard is the limitation of time placed upon the indult granted by an Eastern eparchial bishop. While the Apostolic See and patriarch (major archbishop) may grant such an indult for any period of years, the Eastern eparchial bishop, unlike his Latin counterpart, can grant this indult only for up to three years. It was added to the Eastern norm by the special study group in the revision process, but in the reported proceedings of PCCICOR, no subsequent motion appears to have been made to allow Eastern bishops to grant an indult of exclaustration for a period longer than three years.²¹ Since the power of the eparchial bishop to concede an indult of exclaustration is limited to a concession of three years (CCEO c. 489 §2), in order to obtain an indult of

reside." In the reporting session of the special study group no one opposed giving the supreme moderator the faculty to grant exclaustration nor was the observation made that such an act of governance required the power of orders. See *Communicationes* 13 (1981) 329-330.

Although the Latin Commission saw no obstacle in granting the supreme moderator the power to issue an indult of exclaustration, the Eastern study group viewed granting such an indult as an act of governance that required the power of orders. In deciding to return to the former rule expressed in PAL c. 188, the study group experts reported: "ex officio it is also noted that both the granting of the *indultum exclaustrationis* and the decree by which the *exclaustrationis* imposed on a member of a monastery are administrative acts in the strict sense of the word, and therefore can only be carried out by those who have *potestas regiminis*. In short, the study group decides to return to the *ius vigens* where the granting of this indult is reserved to the Holy See, the patriarch or the local hierarch." *Nuntia* 16 (1983) 64, c. 76.

²¹ Jobe Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes* (Ottawa: St. Paul University, 2008) 215.

exclaustration for more than three years, or to extend it after three years, a member of an eparchial religious institute should approach patriarch (major archbishop), if the institute is within the proper territory of the patriarchal (major archiepiscopal) Church or the Apostolic See in other cases.

2.1.8. Latin and Eastern Norms on Voluntary Exclaustration: A Comparison

Jobe Abbass comments that the current Latin norms on exclaustration (CIC c. 686) reflect the spirit of subsidiarity and are more practical comparing to the Eastern norms on the same.²² According to him,

Regarding the crises or vocational doubts that may have provoked a petition for exclaustration, the supreme moderator of a Latin religious institute of pontifical right, for example, is most likely closer than the competent Roman congregation to the member's situation in order to make an assessment as to its possible solutions. The moderator's consideration of the matter, also in the light of the institute's gifts and founding charisms, is enhanced by the deliberations of council members, whose consent is necessary if, after a review of all the options, exclaustration appears to be the most appropriate. If these observations are valid for Latin religious institutes of pontifical right, they would seem to be especially true in their Eastern counterparts, which are most often smaller and governed directly by the superior general. In such cases, the general is more likely to know the religious personally and have first-hand knowledge of the circumstances that led to the petition for exclaustration. Moreover, the general and council are most often geographically, as well as culturally, closer to the member's situation that now requires a charitable and just solution. Given all these things, it would seem logical to suggest that a future revision of Eastern canons 489 and 548 allow the indult in case of voluntary exclaustration to be granted by the superior of the monastery *sui iuris* or the superior general of an order or congregation.²³

²² Jobe Abbass, "Exclaustration and Separation from the Monastery cc. 489-496," in *A Practical Commentary to the Code of Canons of the Eastern Churches*, ed. John D. Faris and Jobe Abbass, Vol. 1 (Montreal: Wilson & Lafleur, 2019) 489.

²³ Jobe Abbass, "Exclaustration and Separation from the Monastery cc. 489-496," 489.

2.1.9. The Cessation of Voluntary Exclaustration or the Return of the Religious to Institute

A voluntary exclaustration clearly ceases when the term of the indult expires. At the same time, it is generally opined that a voluntarily exclaustrated religious is free to return to the institute before the expiry of the indult.²⁴ According to Ruessmann, since voluntary exclaustration is a favour and no one is obliged to make use of a favour (CIC c. 80§2; CCEO c. 1533 §2), a religious who starts to use an indult of voluntary exclaustration does not have to continue using it. He/she could return to his/her institute at any time and the institute would have to take him/her back.²⁵ An exclaustrated religious can also return when the reason for the exclaustration becomes ceased.

Here comes a question whether the authority of the institute can withdraw a favour (exclaustration) issued by a higher authority or not. It is commonly opined that the institute has the right of recall only if the institute was the authority that granted the exclaustration.²⁶ The superiors cannot withdraw an indult granted by the authority to whom the institute is subject. In such cases the superiors should require the religious to apply to the authority who issued the indult, for cancellation of the indult so as to preclude instability.²⁷

Since the religious is expected to return to the institute on the expiration of the indult, the religious need to apply for another indult well ahead of time, if he or she foresees that he or she needs more time. It seems that the Holy See may well grant one extension (i.e., up to six years), but it is unusual for it to grant successive extensions.²⁸

3. Involuntary or Imposed Exclaustration

Both codes contain the provision for imposing exclaustration upon a religious based upon the petition of the religious institute through a decree by the authority to which the religious institute is subject.

²⁴ George Lobo, *New Canon Law for Religious*, 124; Elizabeth McDonough "Exclaustration," 579; Madeleine Ruessmann, *Exclaustration: Its Nature and Use according to Current Law*, 123.

²⁵ Madeleine Ruessmann, *Exclaustration: Its Nature and Use according to Current Law*, 123.

²⁶ M.O. Reilly, "Permission of Absence from the Community," *Consecrated Life* 10 (1985) 181-189, 186.

²⁷ Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," *Philippine Canonical Forum* 5 (2003) 162.

²⁸ Patrick T. Shea, "Exclaustration," 276.

According to J. Torres, this form of exclaustration arose among monks and nuns one or two decade ago chiefly out of the necessity to provide for the fraternal life in monasteries, where the presence of a member made living together extremely difficult or dangerous. It was imposed by the Holy See alone. As a rule, it had no time limit, and the religious might not return to community nor could the institute receive him/her without the permission of the Apostolic See.²⁹ The previous laws, CIC-1917 for the Latin religious and the *motu proprio, Postquam Apostolicis Litteris* for the Eastern religious, did not speak about such a form of exclaustration. However, the revised canons, both in CIC and CCEO, incorporated it, applying to all religious, and attributing its concession not only to the Holy See but other ecclesiastical authorities, to whom the religious institutes are subject.

<p>CIC c. 686§ 3. At the petition of the supreme moderator with the consent of the council, exclaustration can be imposed by the Holy See on a member of an institute of pontifical right, or by a diocesan bishop on a member of an institute of diocesan right, for grave cause, with equity and charity observed.</p>	<p>CCEO c. 490. Exclaustration can be imposed at the request of the superior of the monastery sui iuris with the consent of the council by the authority to which the monastery is subject for a grave cause, with equity and charity observed.</p> <p>c. 548 §1. An indult of exclaustration can be conceded by the authority to which the order or congregation is subject, having heard the superior general along with his or her council; <i>the imposition of exclaustration is made by the same authority, at the petition of the superior general with the consent of his or her council.</i></p> <p>§2. In other respects, cann. 489-491 are to be observed regarding exclaustration.</p>
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Unlike the differences regarding voluntary exclaustration, the norms concerning imposed exclaustration are very much similar in the Latin and Eastern Codes. Therefore, we treat them together.

3.1. The Competent Authority to Impose Exclaustration

In Latin and Eastern religious institutes, the competent authority to impose exclaustration upon a religious is the authority to which the religious institute is subject. Therefore, the competence to impose

²⁹ Jesus Torres, "Procedure for the Exclaustration of a Religious," 55, 71

exclaustration lies with the Holy See on a member of an institute of pontifical right; with the patriarch (major archbishop) on a member of an institute of patriarchal (major archiepiscopal) right and with the diocesan (eparchial bishop) on a member of an institute of diocesan (eparchial) right. The Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life and the Congregation for the Eastern Churches are the competent dicasteries in the Vatican Curia in this regard.

Regarding the diocesan (eparchial) institutes, CIC says “the diocesan bishop” is competent; whereas CCEO stipulates, the bishop to whom the institute is subject. CIC does not specify who the competent bishop is. However, since the petition is submitted by the supreme moderator, it would be the diocesan bishop where the principal house of the institute exists.

3.2. Conditions for Imposing Exclaustration

Both codes attach the following conditions for the imposition of exclaustration:

- i) Only the supreme moderator (superior of a monastery *sui iuris* and superior general of an order or congregation in the Eastern law) of the religious institute may request the authority to which the institute is subject for imposing exclaustration upon a member of his or her institute.
- ii) The supreme moderator is to submit the petition only with the prior consent of his or her council. The supreme moderator, writing to the competent higher authority, needs to establish that he or she has the consent of his or her council for the exclaustration request.
- iii) There should be a grave reason to impose an exclaustration upon a religious. Only if there are some grave reasons on the part of the religious, the supreme moderator can request for and the competent ecclesiastical authority can impose an exclaustration on the respective religious. Therefore, the supreme moderator, writing to the competent higher authority, has to provide the proofs of a grave reason for an exclaustration. The competent authority may evaluate the gravity of the reasons presented.

In a decision, given in 1990, the Apostolic Signatura stated that the “grave cause” for an imposed exclaustration could be “non-observances, disobediences or a seditious or a very difficult character, which do not merit dismissal, but seriously disturb the peace of the

community."³⁰ According to Ruessmann, the praxis of the Apostolic Signatura indicates that "the purpose of imposed exclaustration is generally to avoid harm to the community (institute); to prevent the daily life of the community from being rendered intolerable."³¹ Case studies on imposed exclaustration, provide examples of grave reasons, such as, persistent refusal of obedience, refusal to submit to superiors, serious violations of the vow of poverty, a character of provoking fights and quarrels, etc. These have been considered as causes for imposing exclaustration, especially when they do not suffice as a cause for dismissal of a perpetually professed member.³² Javier Gonzalez includes the following situations also as grave reasons for imposing exclaustration: a derogatory witness to religious life causing scandal, unwillingness to overcome problems arising from personality disorders, childhood abuse or substance abuse, etc.³³

iv) Finally the law demands that what is carried out be done observing "equity and charity." The expression 'equity and charity are to be observed' is of high religious relevance. Canonical equity, as an intermediate reality between justice and charity, renders more humane the interpretation and application of the law.³⁴ It is "justice tempered with mercy," as defined by Pope Paul VI.³⁵ In his or her request for imposing the exclaustration upon a member of the institute, the supreme moderator, has to confirm that the institute has observed and will observe equity and charity with regard to the member. According to Torres,

³⁰ «In concreto causae contingere possunt [...] cum inobservantibus, inobedientibus, seditiosis aut characteris valde difficilis, qui dimissionem non merentur, sed graviter perturbant pacem communitatis», in Decisions of Apostolic Signatura, 5 May 1990, "Re Imposed Exclaustration," in *Monitor Ecclesiasticus* 115 (1990) 488, quoted in Madeleine Ruessmann, *Exclaustration: Its Nature and Use according to Current Law*, 106.

³¹ Madeleine Ruessmann, *Exclaustration: Its Nature and Use according to Current Law*, 106.

³² Madeleine Ruessmann, *Exclaustration: Its Nature and Use according to Current Law*, 106.

³³ Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 158.

³⁴ Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 159.

³⁵ Paul VI, Allocution, 19 February 1977, *AAS* 69 (1977) 210. Pope quotes from *Summa Aurea* of Henry of Susa (Hostiensis), the famous Italian Scholastic canonist of 13th century (1190-1271) and says "iustitia dulcore misericordiae temperata."

“Frequently the grave cause for imposed exclaustation on the one hand borders between an abnormal, psychically sick personality and morally and humanly culpable behaviour; and on the other hand it borders between the right of the community to live its life of service to God serenely and the desire, perhaps vindictive, to be rid of a noisy and dangerous disturbance, also for the good name of the institute. The problem must be solved with the necessary balance between charity and equity.”³⁶

In other words, an exclaustation should not be imposed to take advantage of the occasion to get rid of problematic members, especially those who are suffering from some psychological sickness, etc.

3.3. The Procedure for Imposing Exclaustation

Imposed exclaustation is a disciplinary measure and this provision is normally resorted to in the case of religious who deserve to be dismissed from the institute, but are such that the process according to the canonical norms is difficult. Therefore, imposed exclaustation has very evidently a penal character.³⁷ Since it is a disciplinary measure, imposed exclaustation is to be employed only if it is the only remedy and with proper procedure. A religious family cannot detach a member from the life of the community unless it is the only way for the benefit of the member as well as of the community.³⁸ It is to be taken into account that imposed exclaustation is something that goes against the will of the religious concerned. Therefore, although the law does not say it, those religious members affected must be previously warned and corrected, and must be given the opportunity to explain their conduct and defend themselves.³⁹

Many commentators indicate that in order to obtain an imposed exclaustation, the institute should generally follow the procedures for a dismissal, including the collection of proofs, the issuing of warnings

³⁶ Jesus Torres, “Procedure for the Exclaustation of a Religious,” 56.

³⁷ Jesus Torres, “Procedure for the Exclaustation of a Religious,” 71

³⁸ Elio Gambari, *Vita religiosa: secondo il concilio e il nuovo diritto canonico*, 1985, English translation is taken from Daughters of St. Paul, *Religious Life: According to Vatican II and the New Code of Canon Law* (Boston: St. Pauls, 1986) 584-585.

³⁹ Javier Gonzalez, “Basic Procedures Pertinent to Religious Institutes,” 159.

and the provision of the opportunity for defence.⁴⁰ The Apostolic Signatura has stated that the procedures to be used for effecting an imposed exclaustration are the same as those for a dismissal, but they may be less rigorously applied because imposed exclaustration is less of a privation than a dismissal by which ceases all the rights and obligations arising from profession definitively.⁴¹ In case of imposed exclaustration, the concerned religious has the right to have recourse against the decree.⁴²

3.4. The Cessation of an Imposed Exclaustration

Both codes are silent with regard to the manner and conditions under which an imposed exclaustration ends. Generally an imposed exclaustration is for an indefinite term, and ends only when the authority that imposed the exclaustration decides to terminate it.⁴³ A religious, who is under imposed exclaustration, cannot return to his or her institute without a decree of revocation from the authority that issued the decree of exclaustration.⁴⁴ There arises the question that, since the exclaustration was imposed upon the request of the supreme moderator with the consent of the council, in order to terminate the imposed exclaustration whether the supreme moderator and his/her council must agree or not. It is opined that, the consent of the institute to the termination of the imposed exclaustration is not necessary for either the liceity or the validity of the decision to terminate the exclaustration. Consequently, the competent hierarchical authority can terminate imposed exclaustration despite the contrary will of the institute.⁴⁵ But, J. Beyar demands that the return of an

⁴⁰ Luigi Chiappetta, *Il codice di diritto canonico*, vol. 1 (Napoli: Editioe Dehoniane, 1988) 787; Andrés J. Domingo, *Il diritto dei religiosi*, 483; George V. Lobo, *New Canon Law for Religious*, 124; David F. O'connor, *Witness and Service: Questions about Religious Life Today* (Mahweh: Paulist Press, 1990) 86-87.

⁴¹ Decisions of Apostolic Signatura, 5 May 1990, "Re Imposed Exclaustration," *Monitor Ecclesiasticus* 115 (1990), 488.

⁴² Jesus Torres, "Procedure for the Exclaustration of a Religious," 71.

⁴³ Domingo Andres, *Il diritto dei religiosi*, (Roma: Editrice Com Pro Rel. 1984) 482; F. D'Ostilio, "De separazione sodalium," 578; Joseph F. Gallen, *Canon Law for Religious* (New York: Alba House, 1983) 194-195; Madeliene Ruessmann, *Exclaustration: Its Nature and Use according to Current Law*, 132.

⁴⁴ Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 162.

⁴⁵ Madeleine Ruessmann, *Exclaustration: Its Nature and Use according to Current Law*, 133. A decree of imposed exclaustration could be considered as a favour conceded to the religious institute, and grantor of a favour can revoke it at any time, even if the recipient (the institute) were unwilling (to take back the exclaustrated member).

imposed exclaustated member should not be allowed against the will of his or her institute. He gives the reasons of justice and analogy to CIC cc. 641 and 690, which require the consent of the competent superior for someone to be admitted or readmitted to the institute.⁴⁶

4. Effects of Exclaustation

Both the Latin code and the Eastern code effectively state that an exclaustated religious is still truly a religious, a member of his or her institute and remains bound by the obligations tied to the vows and religious profession.⁴⁷ However, taking into consideration his or her special situation, the law allows some relaxations in his or her manner of living the religious life. CIC c. 687 and CCEO c. 491 enumerate the effects of exclaustation, both voluntary and imposed. There are some essential differences as well as similarities between the Latin and Eastern norms regarding these effects.

<p>CIC c. 687. An exclaustated member is considered freed from the obligations which cannot be reconciled with the new conditions of his or her life, yet remains dependent upon and under the care of the superiors and also of the local ordinary, especially if the member is a cleric. The member can wear the habit of the institute unless the indult determine otherwise. Nevertheless, the member lacks active and passive voice.</p>	<p>CCEO c. 491. The exclaustated member remains bound by the vows and other obligations of monastic profession which can be reconciled with his or her state; the member must put off the habit; during the time of the exclaustation he or she lacks active and passive voice and is subject to the eparchial bishop of the place where he or she resides in place of the superiors of his or her own monastery also in virtue of the vow of obedience.</p>
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Based upon the canons in both codes, the effects of exclaustation can be attached mainly to the following elements of religious life: common life, observation of the vows, and some other rights and obligations of religious life.

⁴⁶ J. Beyer, "Risposte a quesiti," *Vita Consecrata* 23 (1987) 62. Madeleine Ruessmann, *Exclaustation: Its Nature and Use according to Current Law*, 134-135.

⁴⁷ Jobe Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes*, 222.

4.1. Exemption from Common Life

Common life is an essential element of religious state. It characterizes religious life and distinguishes it from that of secular institutes.⁴⁸ CIC c. 607 §2 states that religious institute is a society in which the members "lead a life of brothers or sisters in common." In describing the religious state CCEO c. 410 begins with the statement that it is "a stable manner of living in common." Therefore, we can say that common life is "an important obligation and right of religious life."⁴⁹ By common life, it is meant that the members of a religious institute "live together in a house of the institute, share its sources, receive support from the institute, and are missioned to an apostolate in the name of the institute."⁵⁰ Living in a community under the authority of a designated superior is the ordinary way of life that flows from profession of evangelical counsels. The law demands that the religious are to live in their own religious house, observing common life (CIC c. 665; CCEO cc. 478, 495, 550). They are not to be absent from their house except with the permission of the superior. Thus, the common life lived in a religious house is intrinsic to the religious state and no one can be said to enter religious life unless he/she embraces community life.⁵¹ Connected to common life, as seen above, there exist the laws on cloister in every religious house (CIC c. 667; CCEO cc. 477 §1, 541). The law of cloister means the prohibition of the religious going outside the house without proper permission and the prohibition of the outsiders entering into the space of enclosure.

Exclaustration provides an exception to this essential element of religious life. As the term indicates, a religious on exclaustration is freed, although temporarily, from common life, from living common

⁴⁸ Elio Gambari, *Vita religiosa: secondo il concilio e il nuovo diritto canonico*, 1985, English translation is taken from Daughters of St. Paul, *Religious Life: According to Vatican II and the New Code of Canon Law*, 342.

⁴⁹ Patrick T. Shea, "Exclaustration," *CLSA Proceedings* 55 (1997) 267. CIC cc. 602, 607 §2, 665 §1, 668 §3, 670, 678 §2 and CCEO cc. 410, 468 §1, 478, 495, 529 §3, 540, 550, etc. prescribe the common life for religious institutes. The proper law of each religious institute stipulates detailed norms of common life in accordance with these canons and with the nature of the institute.

⁵⁰ Rose M. McDermott, "Norms Common to All Institutes of Consecrated Life [cc. 573-606]," in *New Commentary on the Code of Canon Law*, ed. John P. Beal, James A. Coriden and Thomas J. Green, Bangalore: Theological Publications in India, 2003, 767.

⁵¹ T. Lincoln Bouscaren & Adam C. Ellis, *Canon Law: A Text and Commentary*, Vol. 1, (Milwaukee: The Bruce Publishing Co., 1946) 229-230.

life with his or her fellow religious. In other words he or she is dispensed from the rule of cloister. He or she is to live outside of his or her religious institute according to the permission or the order of the competent authority. Therefore, he or she can have a separate residence and can live on his or her own.

4.2. Relaxation in the Observance of the Vows

The exclaustated member continues to be a member of the religious institute and is also bound by religious vows and other obligations taken in his/her definitive profession. However, CIC c. 687 provides that exclaustated religious "are considered as dispensed from those obligations which are incompatible with their new situation of life." CCEO says almost the same thing in a different style as it states that the exclaustated member "remains bound by the vows and the other obligations of monastic [religious] profession that can be reconciled with his or her state" (CCEO c. 491).

Obligations which are incompatible with his or her new condition of life, besides the common life, can include the obligations inherent in the vows, those related to spiritual life, especially the daily spiritual exercises, and those related to the special charism and apostolate of the institutes. Commentators state that, for a religious on exclaustation, these obligations are relaxed, except for the obligation of chastity.⁵² The obligations under the vow of chastity would continue to oblige the same as before. They are not affected or relaxed by exclaustation. There is no mitigation possible with respect to the observance of vow of chastity.

Regarding the obligation flowing from the vow of obedience, CIC c. 687 says that the exclaustated religious remains dependent upon and under the care of the superiors and also of the local ordinary, especially if the member is a cleric. The previous law, both Latin and Eastern, established that an exclaustated religious would be subject to ordinary (hierarchy) of the territory where he or she resided, instead of his or her religious superiors (CIC-1917 c. 639; PAL c. 189). History proved its ineffectiveness since it was not always easy to provide proper pastoral care and attention by the local ordinaries (hierarchs), to the exclaustated religious residing in the diocese, especially in the

⁵² Patrick T. Shea, "Exclaustation," 268.

big cities.⁵³ Therefore, the revised Latin code evidently affirms that the exclaustrated religious remain first and foremost dependent upon and under the care of their superiors.⁵⁴ An additional dependence upon the local ordinary is also established, especially if the exclaustrated member is a cleric.⁵⁵ Therefore, the religious superior and the local ordinary, both, have some sort of authority or care over the religious on exclaustration. To facilitate these roles of local ordinary and the superior in an effective manner, it is suggested that the institute as well as the religious on exclaustration keep some sort of contact with the bishop's vicar or delegate for religious.⁵⁶

The Eastern Code, on the other hand, follows the prior norm in this regard and categorically affirms that an exclaustrated religious is subject to the eparchial bishop of the place where he or she resides, in place of the superior of his or her own institute also in virtue of the vow of obedience (CCEO cc. 491, 548 §2). An exclaustrated eastern religious is to obey, in place of the religious superior, the bishop of the place where he or she has the residence during the period of exclaustration. This Eastern norm echoes a cut-off between the institute and the religious on exclaustration. Perhaps, in a future revision, the Eastern code would also follow the Latin, as that seems more practicable and reasonable.

Regarding the observance of the vow of poverty, it can be stated that the effects of the vow remain theoretically, unless some of them can be considered incompatible with the new situation in the life of the

⁵³ Jean Beyer, *Le droit de la vie consacrée*, (Paris: Editions Tardy, 1988) 142, note 35 as cited in Jobe Abbass, *The Consecrated Life: A Comparative Commentary on the Eastern and Latin Codes*, 219.

⁵⁴ Javier Gonzalez points out that the canon says "Superiors" without making any distinction between Superior General, provincial or local; henceforth, the exclaustrated member is under the dependence and the care of his or her Superiors at all levels. Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 160.

⁵⁵ The subjection to the local ordinary is required in the context that, in case, he is not forbidden by the rescript, such a religious may engage in diaconal or priestly in ministry. The practice of the Apostolic See seems to be to insert in rescripts for exclaustration granted to priests, a clause prohibiting the priest from exercising priestly ministry, including the celebration of Holy Mass, without the permission of the ordinary of the place where he is residing. Madeleine Ruessmann, "Aspects of Exclaustration," 249.

⁵⁶ Patric T. Shea, "Exclaustration," 274.

exclaustrated religious.⁵⁷ That is to say, he or she is expected to live some style of poverty, albeit relaxed, and to live a simple lifestyle. Since the religious is not living in the community, he or she need not give the earnings to the superior and need not seek permission to spend for necessary expenses. However, he or she would have to make reports, turn over any excess money to the community, and seek permission for extraordinary expenses.⁵⁸ He or she would continue to be bound to the rules about patrimonial goods, except to the extent that the rules are incompatible with his or her condition of exclaustation.⁵⁹ He or she can also obtain from the superior the proper dispensation for the changes of the dispositions about administrations, use and usufruct of patrimonial goods, the personal use of stipends, pensions, etc.⁶⁰

4.3. The Right and Obligation of Wearing the Religious Habit

The previous law stated that, during the period of exclaustation, the religious must not wear the religious habit or style of the religious institute (CIC-1917 c. 639; PAL c. 189). CIC 1983 abrogates this norm and allows the exclaustated religious to wear the habit of the institute unless the indult of exclaustation determines otherwise (CIC c. 687). On the contrary, the Eastern Code preserves the previous norm and obliges the exclaustated religious to put off the religious habit (CCEO cc. 491, 548 §2).⁶¹

According to the current Latin norm, the supreme moderators who grant the indult of exclaustation or the authority which imposes exclaustation may prohibit exclaustated members to wear the institute's habit, depending on the reason for the exclaustation and the living situations of the religious; but this has to be done at the

⁵⁷ Jesus Torres, "Procedure for the Exclaustation of a Religious," 59.

⁵⁸ Patric T Shea, "Exclaustation," *CLSA Proceedings* 59 (1997) 273.

⁵⁹ CCEO c. 525 §2 speaks about the giving up of the administration of patrimonial goods for all the time that the member is under vows. Clemente Pujol, *La vita religiosa orientale: Commento al codice del diritto canonico orientale* (Roma: PIO, 1994) 367.

⁶⁰ Jesus Torres, "Procedure for the Exclaustation of a Religious," 60.

⁶¹ Although the initial formulation of the norm made no reference to this issue, when the group of experts decided to return to PAL cc.188-189, the requirement to put off the habit appeared again. *Nuntia* 11 (1980) 34, c. 76 §1; Jobe Abbass, "Exclaustation and Separation from the Monastery cc. 489-496," 491.

moment of granting or imposing the exclaustration.⁶² For example, if the religious is troublesome and is likely to bring some sort of dishonour on the institute, or the institute does not want the person publicly identified with the institute, then the institute should see that the matter is dealt within the indult.⁶³ According to Chiappetta, if the indult does not prohibit it, the exclaustrated religious is obliged to wear the habit.⁶⁴ But Shea says that the code allows, but does not require, exclaustrated members to wear the habit.⁶⁵ Therefore, it would be better to specify the matter in the indult.

4.4. The Right to Have Active and Passive Voice

Another effect of exclaustration according to current canonical norms (CIC c. 687; CCEO c. 491 and c. 548 §2) is that an exclaustrated religious lacks active and passive voice. In this matter, the parallel norms in CIC and CCEO agree. The suspension of passive voice means that one cannot be voted in the elections of the institute, that is, in filling an office or in choosing the delegates to a chapter. The suspension of active voice signifies that one cannot vote in such elections in the institute.⁶⁶ Such deprivation, however, is not considered a punishment, but only a logical consequence of the new situation, as the exclaustrated religious is living outside the community and no longer participates fully in the life of the institute.⁶⁷

⁶² Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 161.

⁶³ Patric T. Shea, "Exclaustration," *CLSA Proceedings* 59 (1997) 275. Madeleine Ruessmann analysing the case of exclaustration granted by the Holy See, finds that in some cases the Congregation has prohibited the member from wearing the habit during the exclaustration, and states that the reasons for such prohibition were different. See, Madeleine Ruessmann, *Exclaustration: Its Nature and Use according to Current Law*, 429-430.

⁶⁴ «Per sé, deve anzi portarlo (can. 669, §1), se nulla é disposto a tal riguardo,» Chiappetta, *Il codice di diritto canonico: Commento giuridico-pastorale*, (note 32) I:834; English translation is taken from Jobe Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes*, 222.

⁶⁵ Patric T Shea, "Exclaustration," 275.

⁶⁶ Chas Augustine, *A Commentary on the New Code of Canon Law*, vol.3, Second Edition (London: B. Herder Book, 1919) 375.

⁶⁷ Actually the right to active and passive voice, which gives the member responsibility for the internal government of the institute, is suspended; the member is free to concentrate on the grave cause which prompted the petition for exclaustration. However the prohibition is valid only for the period of exclaustration; once the latter is over, the religious regains both voices. Rose

It is appropriate that since a religious has distanced himself or herself from the institute by applying for exclaustation, or is being asked to distance oneself by the competent authorities through the imposition of exclaustation, he or she would not be able to appreciate in deciding the governance of the institute.⁶⁸

5. Relationship between an Exclaustated Member and the Institute

In general, it can be stated that the nature of the relationships between an exclaustated member and the institute, such as the support of the institute to the member, the dependence of the member on the institute, communications, visits, etc., also depend upon the reasons and purposes of the exclaustation and the type of exclaustation.

While, according to the Latin Code an exclaustated religious remains "dependent on and under the care of their superiors" (CIC c. 687), CCEO c. 491 does not oblige superiors of Eastern religious institutes to care for an exclaustated member. Therefore, according to Jobe Abbass, the Eastern canon signals a certain estrangement of an exclaustated religious from the institute at least regarding the aspect of dependence.⁶⁹ In fact, every exclaustated religious juridically remains a member of his or her own institute. Therefore, the norms should perhaps be read, not in a literal sense, but rather in the light of the duty that arises from the bond of equity and charity.⁷⁰ Clemente Pujol rightly states, "the religious superior, however, is not completely free, since the religious, even though exclaustated, remains a member of the institute and must in no way be considered as outsider; the religious is to be helped spiritually and even, if necessary materially."⁷¹

McDermott, "Separation of Members from the Institute (cc. 684-704)," in *The Code of Canon Law: A text and Commentary*, ed. James A. Coriden, Thomas J. Green, Donald Heintschel (Bangalore: TPI, 1986) 516.

⁶⁸ Madeleine Ruessmann, *Exclaustation: Its Nature and Use According to Current Law*, 175.

⁶⁹ Jobe Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes*, 221.

⁷⁰ Jobe Abbass, "Exclaustation and Separation from the Monastery cc. 489-496," 491.

⁷¹ «Il superior religioso, però non è del tutto libero, perché il religioso anche se esclaustato rimane membro dell'Istituto, e in nessun modo deve essere considerate come estraneo; va aiutato spiritualmente e anche, se occorre, materialmente». Clemente Pujol, *La vita religiosa orientale: commento al codice del diritto canonico orientale*, 368. English translation is taken from Jobe

The religious institute has to decide what contact it should have with the religious during this period. It should make sure the residence of the religious and may send the customary mailings and newsletters, etc. It is always better to designate another member responsible for regular contacts with the exclaustrated member.⁷²

The participation of the exclaustrated member in community programs and events also depend on the type of exclaustration. According to Shea, if the religious is on imposed exclaustration, the institute may want to prevent the religious from such programs, and from ordinary visits to the community.⁷³

6. Financial Support to the Exclaustrated Member

The law demands that the religious institute must supply the members with everything that is necessary to fulfil the purpose of their vocation (CIC c. 670). A religious on exclaustration is still a member of the institute. Nevertheless, exclaustrated member are supposed to earn income and support themselves from their earnings. If he or she is in economic difficulty and cannot maintain a decent standard of living or are in need due to unseen circumstances, then the institute has to help the member financially as part of showing equity and charity. The institute can do it by lending loans, giving some initial subsidy, etc.⁷⁴

In this regard, Javier Gonzalez gives the following guidelines: 1) a religious on exclaustration is in principle obliged to self support and a simple life style is required by the vow of poverty; 2) whatever the member earns belongs to the institute, but the person on exclaustration must first provide for himself or herself; 3) if the member cannot provide a decent living, the institute should assist; 4) the religious institute is obliged to support the member on imposed exclaustration if circumstances so warrant.⁷⁵

Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes*, 221.

⁷² Patric T. Shea, "Exclaustration," 274.

⁷³ Patric T. Shea, "Exclaustration," 274.

⁷⁴ Patric T. Shea, "Exclaustration," 275. Shea also suggests that the additional assistance should be in keeping with the standard of living in the institute and a serious case of need could even mean expecting that the religious return to the community so that he or she can be properly supported.

⁷⁵ Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 163.

7. Issues Related to Exclaustration

7.1. When the Religious Is not Ready to Accept an Imposed Exclaustration

If the member is aggrieved by the decree of exclaustration imposed on him or her, he/she can go for recourse against the decree following the procedure for recourse against administrative acts (CIC cc. 1732-1739; CCEO cc. 996-1006). In case the decree is issued by the Apostolic See, the religious can have recourse to the Congregation itself that imposed the exclaustration and then to the Signatura Apostolica (PB art. 123), according to the norms in the proper law of the Signatura.⁷⁶ The recourse has no suspensive power unless it is explicitly granted in the decree.⁷⁷

In case a religious is not ready to accept the decree of exclaustration imposed on him or her by the competent authority, the superiors can induce the member to obey it. If still the member is not ready to obey, after repeated warning, the institute can look to the possibility of initiating the process to dismiss the member.

7.2. The Religious Not Returning to the Institute at the Expiration of the Exclaustration

A religious on exclaustration, especially in the case of voluntary exclaustration, is obliged to return to the institute when the period of exclaustration is expired, or if the reason for the exclaustration has ceased. According to Shea, a religious who does not return to the institute, would seem to remain a religious, although not in good standing.⁷⁸ It is necessary, from the part of the institute, to regularise canonically the situation of those who live separated from their religious community. Since such a situation is a kind of illegitimate absence, the provisions of CIC c. 665 §2 and of the *motu proprio Communis Vita* can be applied for the religious belonging to Latin institutes; for the Eastern religious, the norms of CCEO cc. 495 and 550 are to be observed. Accordingly, the institute should solicitously seek

⁷⁶ Benedict XVI, m.p., *Antiqua Ordinatione*, Proper Law of the Supreme Tribunal of the Apostolic Signatura, 21 June 2008, AAS 100 (2008) 513-538; English transl. by William L. Daniel, "Proper Law of the Supreme Tribunal of the Apostolic Signatura," *The Jurist* 75 (2015) 619-657. According to J. Torres, this is a hierarchical recourse before a Dicastery of the Roman Curia. Jesus Torres, "Procedure for the Exclaustration of a Religious," 71.

⁷⁷ Jesus Torres, "Procedure for the Exclaustration of a Religious," 71.

⁷⁸ Patric T. Shea, "Exclaustration," 276.

out the member and if the member does not return, even after repeated summons, he or she can be punished, even dismissed, in accord with the norm of law (CIC c. 665 §2; CCEO cc. 495, 550; *Communis Vita* art. 1).⁷⁹

Conclusion

As I mentioned in the introduction, the provision of "exclaustration" is often considered or even practiced with a negative approach in the religious institutes. It is to be remembered that Sr. Theresa, who was granted with the indult of exclaustration from the Apostolic See to discern her new vocation and to live for that in 1948, later became the great saint Mother Theresa.

We can say that the provision of exclaustration is not an end in itself, but rather it is a possibility, a door for a new beginning. As seen above, exclaustration can be either voluntary or imposed. The first one is a favour and the other is a precept. The favour is granted for the betterment of the individual, to handle an extraordinary situation in his or her life. The precept is given as a medicine, providing the religious a possibility to renew himself or herself and a possibility for the institute to maintain its rights and obligations. The religious on exclaustration as well as the institute should remember that he or she is still truly a religious, a member of his or her institute. Both have the responsibility to maintain it. The religious is to avoid any kind of aggressiveness to the institute or negligence to his or her religious life. On the other side, the institute should take care to avoid any kind of discrimination towards the religious.

⁷⁹ The best way for the major superiors to deal with the matter is showing a fatherly or motherly concern towards the exclaustrated member also with a firm determination to apply the law. Give a written formal warning with the invitation to incorporate themselves to the institute if such is still possible and wish. This warning should include the following reminders: a) that if within a period of time (fifteen days or a month) there is no answer to such invitation, the canonical process of separation from the institute should be commenced (or continued) in accordance with CIC c. 697, CCEO cc. 495 and 550 (unlawful absence which exceeds for a period of six months constitute a ground to start the process of dismissal) b) that there is always readiness to help in the process of dispensation from the religious vows or from the obligations of priesthood; and c) that he/she 'always retains the right to communicate with, and send replies directly to the supreme moderator' (CIC c.698), defending his or her stand. Javier Gonzalez, "Basic Procedures Pertinent to Religious Institutes," 164.

Lastly, it can be stated that the superiors should possess and practice the pastoral approach of "accompanying, discerning, and integrating weakness" (*Amoris Laetitia*, 291-292) in their religious governance. They should be able to discern the particular situation of a member as well as the interests of the institute and decide whether it would be better to opt for the provision of imposing exclaustation, rather than going for any penal procedure. Since imposed exclaustation carries with it a hope and possibility of the renewal of an erring religious, this canonical provision can be made use of, wherever it is possible, with the hope that it would have some positive outcome, since everything is possible for God.

THE NOTION OF CONSECRATION AND PROFESSION IN MONASTIC PROFESSION AND PROFESSION IN ORDERS AND CONGREGATIONS ACCORDING TO CCEO-Part II

Maria Tresa, FCC*

The Second Vatican Council and CCEO use “consecration” and “profession” to denote the commitment that signifies the beginning of the religious life. Despite appearing to denote the same reality, these two terms have different theological and canonical connotations. This article attempts to understand the notions of consecration and profession in CCEO, particularly monastic profession and profession in orders and congregations. For the Part - 1 of this article see, *Iustitia*, Vol. 10, n. 1, pp. 91-106.

5. Are Religious Consecration and Religious Profession Identical?

Religious consecration refers to God’s work, choice, call, separation and consecration. *Lumen Gentium* 44 teaches that religious consecration is mainly an act of God. As Pigna points out, the Second Vatican Council and post-Vatican II documents reserve the word *consecrare* (to consecrate) for the divine action of taking possession of man and imprinting God’s own seal on him.¹ This usage emphasizes the spiritual dimension of consecration. Although it requires the free self-offering of the one consecrated, consecration is initiated and effected by God Himself. It takes place in the Church according to its norms and by virtue of its mediatory role. More a theological term than a juridical one, consecration is not to be reduced to a legal contract, but to reflect the depth of the mystery of a covenant with God. Due respect

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¹ Arnaldo Pigna, *La Vita Religiosa: Teologia e Spiritualità*, 233.

is to be given to the norms that regulate the primary elements, namely self-offering and its approval, of this essentially ecclesial act.

In contrast to consecration, *religious profession* is mainly an action of man that occurs in the Church. It is an external manifestation of the internal *propositum* of giving oneself to God, made explicitly or implicitly through vows professed in the Church and according to its norms. Additionally, religious profession also indicates the liturgical act of assuming the obligation to practice the evangelical counsels and the official public act accepted by the legitimate authority.² Hence, the self-offering of the person takes place in and through the Church. The legitimate religious superior receives the religious profession in the name of the Church. From the profession, two bonds arise: one, consisting of reciprocal rights and obligations, is between the professed and the religious institute; the other is a moral-juridical bond between the person and the Church. In addition to its theological content, religious profession has a binding juridical character.³ In the midst of the actions of God and the Church, the person plays an active role by accepting God's choice and call. By making the profession in the hands of the Church's representative, he or she enters into a new relationship with God, the Church and the religious institute. The religious motive of the profession of the counsels characterises the state of life properly called "religious".⁴

Both religious consecration and profession concern the beginning of religious life. From the distinctions above, we see that religious consecration and religious profession are simultaneous but distinct actions. It could be said that the action of God is primary in consecration, whereas in profession man's promise to God predominates. Since the vows are made in the Church according to its norms and are received in its name, profession is more ecclesial and juridical than consecration. It could be said that spiritually and interiorly it is God who consecrates, but that the juridical and ecclesiastical reality of consecration comes about by profession.⁵

² Gianfranco Ghirlanda, "L'Instrumentum Laboris per il Sinodo sulla Vita Consecrata," *Periodica*, 83 (1994), 448, foot note 11.

³ Elio Gambari, *Religious Life according to Vatican II and the New Code of Canon Law*, 94.

⁴ Elio Gambari, *Religious Life according to Vatican II and the New Code of Canon Law*, 117, footnote 20.

⁵ Elio Gambari, *Religious Life according to Vatican II and the New Code of Canon Law*, 88.

Consequently, the Codes of Canon Law often employ the term *religious profession*.

6. Comparison of the Notion of Consecration in the Monastic Profession with that of the Profession in Orders and Congregations

The first canon under the title Monks and Other Religious as well as Members of Other Institutes of Consecrated Life addressed the consecrated state of religious. CCEO c. 410 establishes that these persons are consecrated through the public vows of obedience, chastity and poverty. Monastic profession, during which the person assumes perpetual vows of obedience, chastity and poverty, is treated in canon 462 §1, while canon 526 discusses temporary profession of these vows in orders and congregations. Hence, in both monasteries and orders/congregations, members profess the public vows of obedience, chastity and poverty and are consecrated.

Consecration is understood as separation from the profane in order to be totally offered to God. This separation and offering, which entails a passage from the profane to divine, occurs in both monastic profession and profession in orders and congregations. Through consecration, a person in the world separates from the secular realm, becomes a member of the monastery, order or congregation, and is dedicated entirely for the divine service and constant communion with God.

God Himself initiates and effects religious consecration. When the person offers himself to God, God accepts and consecrates the person. Thus, in monasteries, orders and congregations, it is God who consecrates the person and effectively makes him or her a religious. The person, in turn, is responsible for making a sweeping and entire gift of self through the profession of the public vows of obedience, chastity and poverty.

The Church must mediate religious consecration in monasteries, orders and congregations. In all three cases, the consecration ceremony takes place during the Divine Liturgy. Since the intent of consecration is to express more clearly, fully and demandingly the obligation of baptism, consecration is considered a deeper and fuller expression of the consecration received at baptism.

Consecration in monasteries, orders and congregations expresses the dynamic and religious aspect of belonging entirely to God.⁶ It entails

⁶ Elio Gambari, *Religious Life according to Vatican II and the New Code of Canon Law*, 91.

the spiritual, interior and exterior consecration God effects and the Church, by its intervention, manifests. Hence, by religious consecration, the members of monasteries, orders and congregations oblige themselves to God and the Church.

	Monastery	Order	Congregation
Concept	Being separated from the secular and consecrated to God and His service	Being separated from the secular and consecrated to God and His service	Being separated from the secular and consecrated to God and His service
Role of God	Consecration is initiated, made and effected by God	Consecration is initiated, made and effected by God	Consecration is initiated, made and effected by God
Role of person	Person offers himself to God fully with free will and proper knowledge	Person offers himself to God fully with free will and proper knowledge	Person offers himself to God fully with free will and proper knowledge
Role of Church	Church receives the self-offering of man and commends it to God through its public prayer	Church receives the self-offering of man and commends it to God through its public prayer	Church receives the self-offering of man and commends it to God through its public prayer
Reference to baptism	Deepening of the baptismal consecration	Deepening of the baptismal consecration	Deepening of the baptismal consecration
Obligation	Obligated to God and the Church to live the consecration and the special obligations arising from it	Obligated to God and the Church to live the consecration and the special obligations arising from it	Obligated to God and the Church to live the consecration and the special obligations arising from it

All the factors are same regarding the consecration that occurs as part of monastic profession and as part of profession in orders and congregations.

7. Comparison of the Notion of Profession in the Monastic Profession with that of the Profession in Orders and Congregations

Monastic profession and profession in orders and congregations are understood as the external manifestation of the internal *propositum* to give oneself to God in and through the Church. Canon 462 speaks about the monastic profession, whereas c. 526 discusses the profession in orders and congregations. In both cases, the law requires profession to be made through public vows of obedience, chastity and poverty. Through this profession, one makes the total self-gift to God.

CCEO uses the words *status monasticus definitive assumitur professione perpetua* (c. 462 §1) to discuss monastic profession and *professio temporaria cum tribus votis* (c. 526) to treat profession in orders and congregations.⁷ Although CCEO does not address perpetual profession in orders and congregations explicitly (it mentions only the effects), this sort of profession is also made by the three vows.

CCEO conceives monastic profession as a perpetual profession of the three religious vows. By perpetual profession, the monastic state is assumed definitively and perpetually. As the phrasing suggests, the profession in orders and congregations is either temporary or perpetual. In orders and congregations, temporary profession is made for a period determined by the statutes and perpetual profession is made afterward. Temporary profession is always oriented toward eventual perpetual profession and is part of the probation period.

Religious vows in monasteries, orders and congregations are public because they are accepted by legitimate religious superiors in the name of the Church. As a result of the vows, the person becomes a member of the monastery, order or congregation, and a bond with reciprocal obligations arises between the person and the institute.

In profession in monasteries, orders and congregations, the internal promise is declared and thus the profession is expressed by external words or other signs. However, modes of making the profession vary. In Eastern monasteries, generally, monastic profession is made through consecratory rites. In these rites, the essential elements of

⁷ Here, the expressions used in CCEO are compared to understand better the implications of the two types of profession.

which are tonsure and conferral of the habit, the vows are made implicitly through the rite. In contrast, in religious orders and congregations, the vows are usually professed explicitly. This profession is made according to the prescribed formula of each institute as part of the rite of profession or the liturgical setting. Since CCEO tries to highlight the consecration in monastic institutes and the taking up of the vows implicitly through the traditional monastic introductory rituals, it uses the words *status monasticus assumitur*, that is, monastic state is assumed. In religious orders and congregations the main element of profession is the public avowal of obedience, chastity and poverty. Hence CCEO uses the expression *professio cum tribus votis*, profession with the three vows.

For all three types of institute, profession is made during the Divine Liturgy according to the prescripts of the liturgical books and *typicon* or statutes. Canon 462 §2 requires that the liturgical books and *typicon* be followed in the monasteries, whereas c. 535 §1 requires following of the statutes which are to establish the liturgical rite.⁸ In other words, profession is made according to the institute's own rite, the rule of the religious institute and its special traditions. Whether in monasteries, orders or congregations, religious profession partakes in the public prayer of the Church. Through the approval of the profession by the Church, one is raised to the canonical state of religious. Thus, through monastic profession one enters the monastic state which is itself religious, and by profession in religious orders and congregations one enters the religious state.

Salachas explains that, in addition to the three vows, monastic profession comprises also the monk's entire *modus vivendi* according to a certain monastic rule.⁹ According to Pujol, when the temporary profession of the three public vows is made in an order or congregation, the person becomes a true religious and from that moment assumes a new state of life.¹⁰ Temporary profession carries the same obligation to obey the statutes as does perpetual profession. This obligation naturally includes the *modus vivendi* of a religious according to the rule of the institute. Although only perpetual profession fully aggregates the member to the institute, he or she

⁸ Clemente Pujol, *La Vita Religiosa Orientale* (Roma: Pontificio Istituto Orientale, 1994), 288.

⁹ Dimitrios Salachas, *La Vita Consacrata nel Codice dei Canonici delle Chiese Orientali* (CCEO) (Bologna: Edizioni Dehoniane, 2006), 192.

¹⁰ Clemente Pujol, *La Vita Religiosa Orientale*, 287.

begins religious life itself from the moment of temporary profession. This is true even though CCEO does not explicitly affirm that the religious state is assumed by temporary profession in orders or congregations.

Hence, in monasteries, orders and congregations, profession is expressed through the public vows of obedience, chastity and poverty. However, the aforementioned institutes differ in whether these vows are made implicitly or explicitly. In monasteries, perpetual vows are assumed, i.e. taken implicitly, through the traditional rite of monastic profession. In religious orders and congregations, a first temporary profession is made in which the vows are usually taken explicitly through the prescribed formula. These vows are then made perpetual after the determined period of time. However, both the temporary and perpetual profession in orders and congregations are made according to the liturgical prescripts approved by the Church and determined in the statutes.

	Monastery	Order	Congregation
Concept	External manifestation of the internal <i>propositum</i> to give oneself to God through the practice of the evangelical counsels	External manifestation of the internal <i>propositum</i> to give oneself to God through the practice of the evangelical counsels	External manifestation of the internal <i>propositum</i> to give oneself to God through the practice of the evangelical counsels
Vows	By the public vows of obedience, chastity and poverty	By the public vows of obedience, chastity and poverty	By the public vows of obedience, chastity and poverty
Making of the vows	Vows are made to God before the competent superior	Vows are made to God before the competent superior	Vows are made to God before the competent superior
Acceptance	Vows are accepted by the	Vows are accepted by the	Vows are

of the vows	superior in the name of the Church	superior in the name of the Church	accepted by the superior in the name of the Church
Time of the making the profession	Takes place in the Divine Liturgy with special rites approved by the Church	Takes place in the Divine Liturgy with special rites approved by the Church	Takes place in the Divine Liturgy with special rites approved by the Church
Approval by the Church	The Church raises the religious profession to the dignity of a canonical state by its approval	The Church raises the religious profession to the dignity of a canonical state by its approval	The Church raises the religious profession to the dignity of a canonical state by its approval
Result of the approval	The professed enters into the religious state as a member of a monastery	The professed enters into the religious state as a member of an order	The professed enters into the religious state as a member of a congregation
Nature of the relationship with God	Covenantal relationship with God	Covenantal relationship with God	Covenantal relationship with God
Nature of the relationship with the religious institute	When accepted by the superior a bond is formed between the professed and the monastery with a whole group of reciprocal obligations	When accepted by the superior a bond is formed between the professed and the order with a whole group of reciprocal obligations	When accepted by the superior a bond is formed between the professed and the congregation with a whole group of reciprocal obligations

Mode of profession	Express profession	Express profession	Express profession
Mode of making the vows	Assumes the vows implicitly . Vows are assumed through promises, response to the interrogations, making the three-fold renunciation, etc.	Makes the vows explicitly . Vows are usually made by pronouncing them according to the prescribed formula of each institute	Makes the vows explicitly . Vows are usually made by pronouncing them according to the prescribed formula of each institute
Way of expressing the internal <i>propositum</i>	Tonsure, the conferral of the habit, interrogation-response, etc.	Profession of the vows	Profession of the vows
Nature of profession regarding the period	Monastic profession is perpetual in nature, but temporary profession is also permitted	Both temporary and perpetual professions are to be made	Both temporary and perpetual professions are to be made
Expression used	<i>Status monasticus definitive assumitur professione perpetua</i>	<i>Professio temporaria cum tribus votis emittatur</i>	<i>Professio temporaria cum tribus votis emittatur</i>

Hence, the fundamental notion of profession is fundamentally the same for monasteries, orders and congregations. However, the manner in which profession is made differs among individual institutes. Each institute portrays its own identity and tradition in religious profession, thereby expressing the same fundamental reality in different ways.

8. The Use of the Word Consecration for Religious Profession in CCEO

In defining religious life, CCEO c. 410 states that religious are consecrated. The term *consecration* is used again in CCEO, Title XII, Chapter I, Art. II, 4°, which equates monastic profession with consecration using *seu*. Thus the consecratory nature of monastic profession is clearly established.

The Eastern code seldom uses *consecration* to discuss the profession in religious orders and congregations. This suggests that perhaps only monastic profession is a consecration, and raises the question of whether profession in religious orders and congregations is actually a consecration.

8.1. Traditional Understanding of Monastic Profession as a Consecration

In Catholic tradition, Eastern monastic profession is generally understood as a consecration. The traditional understanding or recognition of the rite of monastic profession as a consecration may be the reason behind this. The main reason for this recognition is the following of consecratory rituals in the rite of monastic profession.

8.2. Rite of Monastic Consecration and Conventional Consecration

Both Eastern and Western traditions consecratory rituals are solemn and elaborate. The ordinary minister of a consecration is usually a bishop, and numerous efficacious graces are attached to its reception. The new state to which consecration elevates the person is permanent and the rite can never be repeated; the profanation of a consecrated person carries with it the sin of sacrilege.¹¹ In the Eastern Churches, consecration is effected by the prayer together with the sign of the cross, the imposition of hands or the anointing with holy oils.¹² Some of these elements are present in the consecratory rite of monastic profession and may vary among particular traditions. For example, East Syriac, Coptic and Armenian monastic professions employ the imposition of hands, Coptic monastic profession utilizes anointing with holy oils, and Byzantine monastic profession uses neither.

¹¹ John Linus Paschang, *The Sacramentals according to the Code of Canon Law*, Published PhD diss. (Washington DC: Catholic University of America, 1925), 50-51.

¹² Eusèbe Renaudot, "Orationes et Benedictiones ad Consecrationem Omnium" in *Liturgiarum Orientalium Collectio*, I (Londini: Francofurti ad Moenum, 1847), 52-56; Eusèbe Renaudot, "Ad Benedictiones" in *Liturgiarum Orientalium Collectio*, I, 302-312.

Moreover, the ordinary minister of the monastic consecration is not a bishop, but a presbyter and, for monks, usually the superior of the monastery.

Placide de Meester states that according to Byzantine law, which generally reflects the Eastern Christian spirit or legal mentality, consecration generally uses Myron or chrism and so is not a mere blessing, the first of these terms (consecration involving the use of Myron or chrism) must be taken in a broader sense.¹³ Hence, the monastic consecratory rites without these elements also effect a true consecration. Therefore, the monastic profession is considered as a true consecration and is accepted so in the tradition.

As a new type of institute, recognized only in 1900, religious congregations do not have a long tradition.¹⁴ The tradition of religious orders dates from the eleventh century; however, like religious congregations, orders also fell under the influence of Latin tradition. Following Vatican II's recognition of their Eastern character, Eastern orders and congregations have modelled or are modelling the rite of religious profession after that of monasteries.¹⁵ These professions do not blindly copy monastic profession, but rather incorporate the specific rituals of their own liturgical tradition and their own formula for the vows stipulated in their statutes. Moreover, CCEO leaves each order or congregation free to determine the liturgical settings.

Hence, although religious orders and congregations do not have a long tradition of consecration, the liturgical setting of their religious profession can be considered a sign of a true and effective consecration.

¹³ Placide de Meester, "La Bénédiction et la Consécration par Contact dans le Droit et les Rites Orientaux," *Angelicum*, 20 (1943) 254-260, 254, 255: *Dans le droit oriental et je parle ici surtout du droit ecclésiastique de Byzance qui reflète généralement l'esprit ou la mentalité juridique des chrétiens orientaux... Bien que la consécration implique généralement l'usage du myron ou du chrême et se distingue ainsi de la simple bénédiction, le premier de ces termes doit être pris dans une acception plus large.*

¹⁴ Pope Leo XIII on 8 December 1900 by the Bull *Conditae a Christo* described the institutes of simple vows also as religious and their members as true religious.

¹⁵ According to the *Instruction for Applying the Liturgical Prescriptions of the Code of Canons of the Eastern Churches*, n. 52, the Eastern Churches are preparing their own liturgical rites for the religious profession.

8.3. Reason for Adding the Expression *Consecration for Monastic Profession* in CCEO

During the codification of CCEO, the Pontifical Oriental Institute recommended using the term “consecration” for religious profession in CCEO. Robert Taft, who proposed using the phrase “*per consecrationem monasticam seu per vota*” for the first canon on Monks and other Religious, argued that authentic Eastern tradition considers the monastic state as linked to a consecration almost like an ordination, not as a juridical-positive act placed by candidate, although this aspect is not excluded by itself in the proposed formulation.¹⁶ Clemente Pujol also proposed replacing the “*professio religiosa o monastica*” with “*consecratio religiosa o monastica.*” For him, the term “consecration” more conformed to Eastern tradition and better expressed the doctrines of *Lumen Gentium* 44 and *Perfectae Caritatis* 1 of the Second Vatican Council.¹⁷ Arguing that that monastic profession was traditionally linked to a consecration, Taft favoured using “*per consecrationem monasticam*” to refer to monastic profession. Taft also authenticated it with some references like “Wawryk OCA and Fonti ser. II, 10, pp. 372 ff,” and affirmed that the Easterners always spoke of *monastic consecration*, or of the *mystery of monastic consecration*.¹⁸

The Study Group that examined the PIO proposals ultimately changed the title to “*consecratione seu de professione monastica*” without changing the canons themselves. While considering PIO’s reasons valid, the group decided that modifying the canons in this way would change all other associated canons and prevent a clear presentation of certain matters. Moreover, the term profession was canonically clear and used by the current law. Therefore, the Study Group decided to leave the double nomenclature only in the title,¹⁹ which is the present, “Title XII,

¹⁶ PCCICOR, Prot. 1256/81/1, 45.

¹⁷ PCCICOR, Prot 1256/81/1, 105: PIO: (P) *La dicitura “professio religiosa o monastica” potrebbe essere cambiata con l’espressione “consecratio religiosa o monastica.” Questo modo di parlare, oltre a essere più conforme con la tradizione orientale, sembra corrispondere meglio al modo di parlare del Conc. Vat. II nella “Lumen gentium” n.44 nel “Perfectae caritatis n.1” cf. PIO (T) al can.50 e1.*

¹⁸ PCCICOR, Prot 1256/81/1, 107: PIO (T) *al §1 si legga “per consecrationem monasticam” per il motivo già espresso nel can.1 cf. WAWRYK OCA; oppure FONTI ser.II, 10, pp.372 ff. Gli orientali parlano sempre della “consecratio monastica,” oppure del “Mistero della consacrazione monastica,”*

¹⁹ PCCICOR, Prot 1256/81/3, 33: *Il coetus prende in esame il rilievo fatto dal PIO, lo discute e decide di dire nel titolo “de consecratione seu de professione*

Chapter I, Art II, 4°," monastic profession or consecration. The Study Group accepted the change also because it corresponded to the word of the title of the schema, *vita consecrata*.²⁰ They added the expression *consecration* to monastic profession only, with no about adding the expression *consecration* to the profession in orders and congregations.

PIO favoured the expression *consecration* based on (1) the traditional understanding of the Eastern monastic profession as a consecration²¹ (2) its superior way of expressing the doctrines in *Lumen Gentium* 44 and *Perfectae Caritatis* 122 (3) its better matching with the word of the title of the schema, *vita consecrata*.²³

The references given, *Fonti ser. II, 10, pp. 372 ff* and *Wawryk OCA* are examined. In *Fonti ser. II, 10, pp. 372 ff*, which deals with the Byzantine monastic tradition, the expression used is "monastic profession." On pages 372 and the following, the different rituals for making the monastic profession and their implications are described.²⁴ However, the expression "monastic consecration" is not used there.

"Wawryk OCA" refers to *Initiatio Monastica in Liturgia Byzantina* written by Michael Wawryk, which is *Orientalia Christiana Analecta*, vol. 180, published by PIO in 1968. This book describes the rite of monastic profession, especially the Byzantine. In it, the quote from O. Rousseau clearly states, "This sacred character of monastic life - appears especially in the rite of monastic consecration, whose essence consists, in Pseudo-Dionysius and in the later tradition, not so much, as in the West as in a personal promise, without this aspect being excluded, but above all in a consecration."²⁵ Wawryk analysing the

monastica" ma non nel testo dei canoni: perché pur riconoscendo valide le ragioni addotte dal PIO, tuttavia non si ritiene opportuno cambiare i canoni: 1) infatti una tale sostituzione implicherebbe tutti gli schemi e non è facile dire p.e. a decem annis consecratus; 2) perchè ormai questo termine è canonicamente chiaro e lo si usa normalmente nel diritto vigente. Pertanto si concorda di lasciare la doppia nomenclatura solo nel titolo dell 'art. IV, mentre nei rispettivi testi dei canoni rimarrà il termine "professio."

²⁰ *Nuntia*, 16 (1983), 45-46.

²¹ PCCICOR, Prot 1256/81/1, 107.

²² PCCICOR, Prot 1256/81/1, 105.

²³ *Nuntia*, 16 (1983), 45-46.

²⁴ *Sacra Congregazione per la Chiesa Orientale Codificazione Canonica Orientale, Fonti Serie II, Fascicolo 10, De Monachico Statu Iuxta Disciplinam Byzantinam*, 372.

²⁵ Olivier Rousseau, "Le role important du monachisme dans l'Eglise d'Orient," in *Il Monachesimo Orientale, Orientalia Christiana Analecta*, 153, 33-55 (Roma:

reason, explains this a little more and says that profession was considered as another baptism in the ancient monastic tradition, and this influenced the development of the rite of monastic consecration.²⁶ Wawryk points to the mystical aspect of monastic consecration, which is the Eastern concept, quoting Casel, “just as baptism, as a mystery represents and brings about the mystical experience, so too is the admission to monastic life, increasingly ritually developed into a mystery.”²⁷

In “Wawryk OCA,” we find monastic profession as a consecration likened to a second baptism. The rite of monastic profession is analogous with that of baptism, and, like baptism, it is also a mystery. Profession in religious orders and congregations is also considered a second baptism, or baptism’s deepening and fuller expression (PC 5). The analogy of religious profession with baptism occurs not only in the rite, but also in the theological contents.²⁸

In speaking of religious *as consecrated* in LG 44²⁹ and PC 1,³⁰ the Second Vatican Council does not intend only monks but all members of

Pont. Institutum Orientalium Studiorum, 1958), 38, as found in Michael Wawryk, *Initiatio Monastica in Liturgia Byzantina, Orientalia Christiana Analecta*, 180 (Rome: PIO, 1968), 27.

²⁶ Michael Wawryk, *Initiatio Monastica in Liturgia Byzantina, Orientalia Christiana Analecta*, 180, 27.

²⁷ “Die Mönchsweihe, 3,” as found in Michael Wawryk, *Initiatio Monastica in Liturgia Byzantina*, 27.

²⁸ See Deepening and Fuller Expression of the Baptismal Consecration.

²⁹ LG 44: “The faithful of Christ bind themselves to the three aforesaid counsels either by vows, or by other sacred bonds, which are like vows in their purpose. By such a bond, a person is totally dedicated to God, loved beyond all things. In this way, that person is ordained to the honour and service of God under a new and special title. Indeed through Baptism a person dies to sin and is consecrated to God. However, in order that he may be capable of deriving more abundant fruit from this baptismal grace, he intends, by the profession of the evangelical counsels in the Church, to free himself from those obstacles, which might draw him away from the fervour of charity and the perfection of divine worship. By his profession of the evangelical counsels, then, he is more intimately consecrated to divine service.”

³⁰ PC 1: “Indeed from the very beginning of the Church men and women have set about following Christ with greater freedom and imitating Him more closely through the practice of the evangelical counsels, each in his own way leading a life dedicated to God.... In order that the great value of a life

monasteries, orders and congregations, which have equal dignity among themselves. Additionally, under the title of the schema *vita consecrata* come not only monasteries, but also the orders and congregations.

Here we see that the reasons put forward for adding the expression "consecration" to monastic profession are valid for the profession in orders and congregations also. Hence, the profession in orders and congregations can be considered as true a consecration as is monastic profession. Eastern canonists support this conclusion. The suggestion Pujol, one of the observers from PIO and a member of the Study Group, was to replace "*professio religiosa o monastica*" with "*consecratio religiosa o monastica*," which naturally admitted the consecratory nature of the profession in orders and congregations.³¹ During the discussion for the codification of the canons on Laity, it was said that the consecration of the religious at the time of their profession does not permit them to be called laity; and this fact is very much reflected in the Eastern tradition and corresponds well to the doctrines of LG and PC.³² Thus, all Eastern religious constitute the *religious state of life* in the Eastern tradition. In his book, *La vita consacrata nel Codice dei Canonici delle Chiese Orientali* (CCEO), Salachas writes that according to the authentic Eastern tradition, the monastic and religious states are linked to a total and unconditional consecration, although the aspect of the positive legal act, placed by the candidate with the profession of public vows, is not excluded from it.³³ The term "religious" refers to those of monasteries, orders and congregations. When he deals with the profession in religious orders and congregations, he says that both the monks and the religious in the orders and congregations are consecrated. Monastic profession is not limited to making vows, but rather entails consecrating the whole being of the monk. Likewise, religious profession in orders and congregations consists both

consecrated by the profession of the counsels and its necessary mission today may yield greater good to the Church ..."

³¹ PCCICOR, Prot. 1256/81/3, 33.

³² *Nuntia*, 21 (1985), 6; Sunny Thomas, "Oriental Character of the Eastern Code," in *The Eastern Code Text and Resources*, Yoannis Lahzi Gaid, ed., *Kanonika*, 13, 105-146 (Rome: PIO, 2007), 139.

³³ Dimitrios Salachas, *La Vita Consacrata nel Codice dei Canonici delle Chiese Orientali* (CCEO), 45.

profession of vows and the consecration of the whole religious person to follow the Lord.³⁴

Thus, it is evident that the reasons given for adding the word *consecration* for monastic profession is valid for the profession in orders and congregations also.

Conclusion

The notion of consecration is the same in monastic profession and profession in orders and congregations. All of these professions effect true consecration, as they include separation from the profane and self-offering to God, which entails a passage from the profane to divine. Furthermore, in all cases, God Himself initiates and effects the consecration. The person is thus consecrated as a member of a monastery, order or congregation, when he offers himself completely to God in the Church through the expressed profession of the public vows of obedience, chastity and poverty in the respective institute. The fundamental notion of all religious profession is a self-offering through the profession of the public vows of obedience, chastity and poverty. The difference between profession in monasteries and in orders and congregations lies in the mode of making the vows, which is implicit in monasteries and explicit in orders and congregations.

To deny the consecratory nature of profession in religious orders and congregations is also to deny the action of God in these professions. Moreover, it is against the teachings of the dogmatic constitution of the Church, *Lumen Gentium*, which lays a solid theological foundation for religious life and considers religious persons as consecrated. By extending the expression "consecration" to profession in orders and congregations, CCEO helps to understand the meaning of religious profession more fully and promotes fidelity to the eastern concept of religious profession.

³⁴ Dimitrios Salachas, *La Vita Consacrata nel Codice dei Canonici delle Chiese Orientali (CCEO)*, 226-227.

VOS ESTIS LUX MUNDI: TEXT AND COMMENTARY – Part I

Domy Thomas, MSFS*

This article is a commentary on the Apostolic Letter in the form of *Motu Proprio Vos estis lux mundi*, promulgated by the Supreme Pontiff on 7 May 2019. Each article of the document is taken separately and given the possible interpretation in the numerical order. Since the document deals with penal matter, the author has tried to give a strict interpretation. The article is divided into two parts dealing with two titles of the document.

Introduction

Sexual abuse by the clergy and especially of minors is one of the problems that is faced by the Catholic Church. Sexual abuse of anyone by any person is considered to be a sin by the Catholic Church. It is not just a canonical delict, which is internal to the Church but it is also a crime prosecuted by civil law. When the person abused is a minor or the vulnerable, it becomes more serious. Going by the secular media - presuming that it is authentic and credible - it seems that the Church has failed in curbing the abuse of minors by the clergy. But, a closer look into the development of the legislation of the Church may help many to overcome the misunderstandings and it may give clarity as to what is the mind of the Church with regard to this problem and how she has faced it over the centuries. The ecclesiastical legislation on the sexual abuse by the clergy has been subjected to many changes over the centuries. Church always read 'the signs of the time,' and accordingly made necessary changes in the legislation in order the better to keep abreast of the developments in the world. On 7 May 2019 the Supreme Pontiff issued an apostolic letter in the form of *Motu*

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Proprio called *Vos estis lux mundi*,¹ and it entered into force on 1 June 2019. It appears as a concrete result of the “Meeting on the Protection of Minors in the Church”, in which the Presidents of the Episcopal Conferences and the Synods of the Oriental Catholic Churches, together with other Bishops from all over the world gathered at the Vatican on 21-24 February 2019.²

The document begins with an introduction and is divided into two titles. The first title deals with general provisions and the second title treats the provisions concerning bishops and their equivalents both in the Latin Church and in the Oriental Catholic Churches. It has altogether 19 articles of which the first 5 are part of the first title and the rest are part of the second title. It establishes the procedure for the Universal Church when facts are reported about the crimes against the sixth commandment of the Decalogue, as well as the norms of the Code on the subject.³ The articles are taken one by one and given possible interpretation.

The interpretation of penal law requires great care and attention and it should not be treated like the other sections of the law; for example, on a particular matter if there is no express provision (a seeming *lacuna*) in the law, it is generally permitted to have recourse to supplementary sources of law to resolve specific cases; but such recourse, is prohibited when it is a penal matter. Penal laws have a special rule for interpretation. As always, the words of the law are to be interpreted according to their proper meaning in the law, when considered in text and in context. Though generally, it is possible to use the broad interpretation of the law in force, this is not the case with penal laws;

¹ Francis, Motu Proprio *Vos estis lux mundi*, 7 May 2019, in http://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html, accessed on 07/08/2019.

² Cf. J. I. Arrieta, “Explanatory Note: Motu Proprio *Vos estis lux mundi*”, in <http://www.delegumtextibus.va/content/testilegislativi/it/eventi/notaespliativa-vos-estis-lux-mundi--dal-mons--juan-igancio-ar.html>, accessed on 07/11/2019.

³ Cf. F. Iannone, “Nota Esplicativa: Motu Proprio *Vos estis lux mundi*”, in <http://www.delegumtextibus.va/content/testilegislativi/it/eventi/notaespliativa--vos-estis-lux-mundi--dal-mons--filippo-iannone.html>, accessed on 07/11/2019.

the laws which prescribe a penalty must be interpreted strictly.⁴ A strict interpretation understands the words in its most strict or least extensive sense. That is, under the sense of the words, only those things are said to be willed by the legislator, which are absolutely necessary to establish a norm, which does not become empty or does not lack an effect, but at least produce something.⁵ These things are to be kept in mind while interpreting *Motu Proprio Vos estis lux mundi*, since it contains penal matter.

Title I: General Provisions

The first title presents the subjective and objective elements of the provision in a general way. It identifies the subjects bound to the law, provides four behaviors that concretely motivate the provision, determines the obligation to file a complaint by clerics and religious, establishes obligatory safe methods to receive and transmit reports to the authority that must investigate and, finally, points out rules to protect both the person submitting the report and those who claim to have been offended.⁶

1. Scope of Application

Article 1

§1. These norms apply to reports regarding clerics or members of Institutes of Consecrated Life or Societies of Apostolic Life and concerning:

- a) delicts against the sixth commandment of the Decalogue consisting of:
 - i. forcing someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts;
 - ii. performing sexual acts with a minor or a vulnerable person;
 - iii. the production, exhibition, possession or distribution, including by electronic means, of child pornography, as well as by the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions;

⁴ Canons 17-19 CIC 1983; 1499-1501 CCEO 1990; Cf. J. Provost, "Offences against the Sixth Commandment: Towards A Canonical Analysis of Canon 1395", in *The Jurist* 55 (1995), 633.

⁵ Cf. G. Michiels, *Normae Generalis Juris Canonici*, vol. 1, Paris, 1949, 480-481.

⁶ Cf. J. I. Arrieta, "Explanatory Note: *Motu Proprio Vos estis lux mundi*", accessed on 07/11/2019.

b) conduct carried out by the subjects referred to in article 6, consisting of actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against a cleric or a religious regarding the delicts referred to in letter “a)” of this paragraph.

§2. For the purposes of these norms,

- a) “*minor*” means: any person under the age of eighteen, or who is considered by law to be the equivalent of a minor;
- b) “*vulnerable person*” means: any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence;
- c) “*child pornography*” means: any representation of a minor, regardless of the means used, involved in explicit sexual activities, whether real or simulated, and any representation of sexual organs of minors for primarily sexual purposes.⁷

The first article supplies the scope of the application of this document. It has two paragraphs. The first paragraph speaks of the people to whom these norms are applicable and the delicts for which these norms may be applied. The second paragraph explains who is a minor or a vulnerable person and what is meant by child pornography in this document.

§1. The Subjects and the Applicable Delicts

The norms of the document *Vos estis lux mundi* are applicable to the reports regarding the clerics or members of Institutes of Consecrated Life or Societies of Apostolic Life regarding the delict that are given in the same article in two broad divisions: a) The Delicts against the Sixth Commandment of the Decalogue; b) Conducts of Actions or Omissions to avoid or Interfere with Investigations.

The first group, to whom the norms are applicable, is the clerics. Clerics who are also known as sacred ministers are those in sacred orders, they could be deacons, priests or bishops because a person becomes a cleric by the reception of diaconate.⁸

The second group is the members of Institutes of Consecrated Life or Societies of Apostolic Life. That includes all the institutes that have the obligation to take the vows of the evangelical counsels (Religious

⁷ *Vos estis lux mundi*, Article 1.

⁸ Canons 207, 266 §1 CIC 1983; 323, 358 CCEO 1990.

Institutes and the Secular Institutes) and the Societies of Apostolic Life. These norms surpass the subjects bound in this matter by the *delicta graviora*, which are only for the clerics.⁹ The procedural norms applicable to them depending on their status are to be followed.

a) The Delicts against the Sixth Commandment of the Decalogue

The delicts for which the norms applied is divided broadly into two of which the first is the delicts against the sixth commandment of the Decalogue consisting of three categories.

The 1983 Code as well as the 1917 Code in the respective canons use the term, "offence against the sixth commandment of the Decalogue" to refer to sexual sins, including the sexual sins against minors.¹⁰ The use of this term as a phrase for all sexual sins is a comparatively recent development in the moral tradition of the Church.¹¹ Basically, the sixth commandment was understood as prohibition of adultery from the Old Testament times to the middle ages. The social and religious implications in the successive periods from the high middle ages were such that the commandment was used to describe and condemn many different sexual offences. It gives the indication that the understanding of the commandment was neither uniform nor univocal.¹² *Catechism of the Catholic Church* teaches: "Tradition of the Church has understood the sixth commandment as encompassing the whole of human sexuality."¹³ A study of the moral tradition of the Church would give us another perspective of the use of this term. The use of the term 'sixth commandment' by moral theologians of the Church did change during the 'manualist period,' the period which followed from the Council of Trent up to early part of this century. The term became the instrument used to ground the discussion on chastity. It was fundamental in identifying the sin against chastity with the intension

⁹ Cf. J. I. Arrieta, "Explanatory Note: Motu Proprio *Vos estis lux mundi*", accessed on 07/11/2019.

¹⁰ Canon 1395 CIC 1983. The parallel canon of CCEO does not use the terms "offence against the sixth commandment of the Decalogue" but uses the terms "external sin against chastity" (Canon 1453 CCEO 1990). CCEO penalizes only ongoing sexual delicts not the occasional sexual delicts (Cf. J. P. Beal *et alii* (eds), *New Commentary on the Code of Canon Law*, Bangalore, 2010, 1599).

¹¹ Cf. J. S. Grabowski, "Clerical Sexual Misconduct and Early Traditions Regarding the Sixth Commandment", in *The Jurist* 55 (1995), 529.

¹² Cf. J. S. Grabowski, "Clerical Sexual Misconduct and Early Traditions Regarding the Sixth Commandment", 588.

¹³ *Catechism of the Catholic Church*, no. 2336.

to seek venereal pleasure, but even during this period the use of this term was somewhat indefinite and not universal.¹⁴ It is clear from the fact that this term was not utilized in other legal sources prior to the 1917 Code.¹⁵ According to Provost, the use of the term “offence against the sixth commandment” in 1917 Code might have stemmed from its use as a rubric by some outstanding canonists of the nineteenth century like Wernz. He also stresses that this was not standard usage in the law, nor even a central consideration in the commentators prior to the 1917 Code.¹⁶ The period of ‘ecclesiastical positivism’ may be said to begin to emerge as early as the Pontificate of Leo XIII (1878-1903), and extends primarily through the Pontificate of Pius XI (1922-1939) and Pius XII (1939-1958).¹⁷ During this period, there was a movement away from the reliance on the term ‘offence against sixth commandment’ and natural law was given importance.¹⁸ The contemporary period of personalism began with the renewal of moral theology by Second Vatican Council and continued to the catechetical works of John Paul II.¹⁹ During this period, we see a return to the use of the term for the expression of sexual sin as a whole.²⁰ The Code does not contain a definition of what is meant by “an offence against the sixth commandment.”²¹ One can confidently say that the use of term ‘offence against sixth commandment,’ refers to an act of adultery. To make any further connection with other sexual offences can be only

¹⁴ Cf. J. Tuohey, “The Correct Interpretation of Canon 1395: The Use of the Sixth Commandment in the Moral Tradition from Trent to the Present Day”, in *The Jurist*, 55 (1995), 625-626.

¹⁵ Cf. J. Provost, “Offences against the Sixth Commandment: Towards A Canonical Analysis of Canon 1395”, 641.

¹⁶ Cf. J. Provost, “Offences against the Sixth Commandment: Towards A Canonical Analysis of Canon 1395”, 638.

¹⁷ Cf. J. Tuohey, “The Correct Interpretation of Canon 1395: The Use of the Sixth Commandment in the Moral Tradition from Trent to the Present Day”, 595.

¹⁸ Cf. J. Tuohey, “The Correct Interpretation of Canon 1395: The Use of the Sixth Commandment in the Moral Tradition from Trent to the Present Day”, 621.

¹⁹ Cf. J. Tuohey, “The Correct Interpretation of Canon 1395: The Use of the Sixth Commandment in the Moral Tradition from Trent to the Present Day”, 595.

²⁰ Cf. J. Tuohey, “The Correct Interpretation of Canon 1395: The Use of the Sixth Commandment in the Moral Tradition from Trent to the Present Day”, 621.

²¹ Cf. W. H. Woestman, “Sexual Abuse of a Minor as an Irregularity for Order: A Magic Bullet”, in *Studia canonica*, 40 (2006), 37.

arrived at, through implicit reference, according to the moral tradition of the Church.²² The parallel canon in CCEO 1990 does not use the term "offence against the sixth commandment of the Decalogue" rather it uses the term "external sins against chastity."²³ Interestingly, this canon penalizes only ongoing sexual delicts and not occasional delicts.²⁴

i. Forced Sex

The first delict given in this document is forcing someone to perform or to submit to sexual act and this force could be in three ways: by violence or threat or even by abuse of authority. This includes cases of sexual abuse against any person. Canon 1395 §2 of CIC 1983 deals with crimes against the sixth commandment, which have been committed by force or by threats or in public. It states explicitly "force and threats" indicating both physical and psychological aspects. As per this canon, any sexual advance with the use of force or threats or in public by any cleric warrants punishment. The offence might be committed with physical force or accomplished through the use of threats such as psychological or moral violence.²⁵ The intended force and threat is to commit a sexual assault.²⁶ Rape is an example for this, but sexual violence does not only mean rape. It is also the case of sexual harassment. Threat, which is putting a mental pressure, tends to make the person act contrary to chastity. The offender threatens for example with such situation as: making public defaming information, causing loss of what they are supposed to get, and other damages. This document does not use the term 'public' but speaks about forcing some one to perform or submit to sexual acts either by violence or by threat, or even by abusing the authority one has.

ii. Sexual Abuse of Minors or Vulnerable Persons

The second delict in the document is "performing sexual acts with a minor or a vulnerable person." The 1983 Code in its canon 97 determines that anyone below the age of eighteen is a minor and that a

²² Cf. J. Tuohey, "The Correct Interpretation of Canon 1395: The Use of the Sixth Commandment in the Moral Tradition from Trent to the Present Day", 628-629.

²³ Canon 1453 CCEO 1990.

²⁴ Cf. J. P. Beal *et alii* (eds), *New Commentary on the Code of Canon Law*, 1599.

²⁵ Cf. W. H. Woestman, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, 145.

²⁶ Cf. G. Sheehy, *The Canon Law Letter & Spirit: A Practical Guide to the Code of Canon Law*, London, 1995, 805.

person below the age of seven is considered an infant. Canon 1395 §2 reiterates that there was an ecclesiastical delict, if a cleric commits an offence against the sixth commandment “with a minor below the age of sixteen years.” This was the same age that was determined by the 1917 Code in its canon 2359 §2. It could have been due to the understanding of that time, because the present Code in canon 1082 §1 gives the minimum completion of the age of sixteen for man and fourteen for woman to enter into a valid marriage. In olden times, in many parts of the world, it was an accepted factor. The age determination by Code of Canon Law varies according to the matter at hand. For example, we have infant baptism and adult baptism;²⁷ a minor who is no longer an infant can have domicile and quasi-domicile (canon 105 §1); minors under the age of fourteen are exempted from giving evidence in the court (canon 1550 §1).

Derogation to Canon 1395 §2: Derogation is the partial revocation or change of a law made by a competent authority, as opposed to abrogation or the total abolition of a law. The term is used in both civil law and Canon Law.²⁸ The derogation of the norm, which we deal here focuses on the sexual abuse of minors by clerics.

Sacramentorum sanctitatis tutela (SST) in 2001: John Paul II promulgated a special law by his Motu Proprio *Sacramentorum sanctitatis tutela* on 30 April 2001.²⁹ The Motu Proprio was followed on 18 May 2001 by a CDF letter to the Ordinaries entitled *de delictis gravioribus*, giving the key thrust of the substantive and procedural norms.³⁰ This document came into effect, or took the legal force, on 5 February 2002, that is, three months from the date of its (5 November 2001) publication in the AAS. This is, because it did not oblige immediately in virtue of the nature of the matter; and SST did not make special provision for the

²⁷ There is no term ‘minor baptism’ if the age the one receiving baptism is between seven and eighteen and it is also considered as an ‘adult baptism.’ If the child is below the age of seven, it is called infant baptism (canon 868).

²⁸ Cf. J. Pulickal, *A Dictionary of Canon Law*, Trissur, 2004, 145.

²⁹ John Paul II, Apostolic Letter Issued Motu Proprio, *Sacramentorum sanctitatis tutela*, 30 April 2001, in AAS, 93 (2001), 737-739.

³⁰ CDF, Letter to the Ordinaries, *De delictis gravioribus*, 18 May 2001, in AAS, 93 (2001), 758-788; Cf. F. R. Aznar Gil, “Los ‘graviora delicta’ reservados a la congregación para la doctrina de la fe. texto modificado (2010)”, in *Revista española de derecho canónico*, 68 (2011), 288.

norms being operative sooner (canon 8 §1).³¹ SST clearly specified that a sin against the sixth commandment with a minor is a graver crime or *delictum gravius*. Further, defining *graviora delicta* against morals, and other abuses committed in the context of celebration of the sacraments, the apostolic letter of CDF claims its exclusive competence to provide special procedural norms, and thus to declare or impose canonical sanctions in cases involving the reserved delicts.³² The ultimate purpose of these provisions is the salvation of souls, "which must be always the supreme law of the Church and fulfilment of the Church's responsibility to intervene to avert dangers of violation concerning faith and morals."³³ The letter of CDF, which communicated the procedural norms, appending the apostolic letter, expressed the purpose as not only to avoid entirely the more grave delicts, but to help the Ordinaries and Hierarchs who have solicitous pastoral care to look after the clergy and the faithful through necessary sanctions.³⁴

The first part of the SST contains substantive norms. And what directly pertains to abuse of minors by clerics is given in article four. It reads thus:

§1 Reservation to the Congregation for the Doctrine of the Faith is also extended to a delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years.

³¹ Cf. T. J. Green, "Sacramentorum sanctitatis tutela: Reflections on the Revised May 2010 Norms on More Serious Delicts" in *The Jurist*, 71 (2011), 121.

³² Cf. R. W. Oliver, "Sacramentorum sanctitatis tutela: Overview and Implementation of the Norms Concerning the More Grave Delicts Reserved to the Congregation for the Doctrine of Faith", in *CLSA Proceedings*, 65 (2003), 152.

³³ *Sacramentorum sanctitatis tutela, SS.mae Eucharistiae maxime et Paenitentiae, necnon fidelium in sortem Domini vocatorum praeservatio in observantia sexti Decalogi praecepti, postulant ut ad salutem animarum procurandam, "quae in Ecclesia suprema semper lex esse debet"* (Codex Iuris Canonici, canon 1752), ipsa Ecclesia sua pastoralis sollicitudine interveniat ad praecavenda violationis pericula. (John Paul II, Apostolic Letter Issued Motu Proprio, *Sacramentorum sanctitatis tutela*, 737; English translation in R. W. Oliver, "Sacramentorum sanctitatis tutela: Overview and Implementation of the Norms Concerning the More Grave Delicts Reserved to the Congregation for the Doctrine of Faith", 152).

³⁴ CDF, Letter to the Ordinaries, *De delictis gravioribus*, in AAS, 93 (2001), 788.

§2 One who has perpetrated the delict mentioned in § 1 is to be punished according to the gravity of the offense, not excluding dismissal or deposition.

Here we see a derogation from the canon 1395 and *SST* is a finest example of the Church's commitment amidst the crisis to a humble acknowledgment of the problem with total unequivocal respect for the truth in fairness and justice.³⁵ The document states very clearly that the cleric should be punished according to the gravity of the offence, not excluding dismissal and the competence is reserved to the CDF.

In the year 2001, *SST* determined for the Universal Church that the sin against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen is reserved to CDF. In canon 1395, the age given is sixteen.³⁶ According to Scicluna, age of the victim is one of the matters elaborated by the jurisprudence of the CDF. *SST* has put this at "under 18 years." This follows a number of civil laws.³⁷

Though in some countries the civil law considers a person above 16 years of age as capable of giving consent for sexual activity, *SST* however, stigmatizes as a grave delict every violation of the sixth commandment with a minor who has not completed 18 years of age.³⁸

Thus, the legislator has derogated from the norm of canon 1395 §2 the age limit for commission of the crime of the sexual abuse of minors by the clergy. By extending the age of the minor, the law extends the delict and the possibility of prosecuting it later than foreseen in the 1983 Code.³⁹

³⁵ Cf. C. J. Scicluna, "Sexual Abuse of Children and Young People by Catholic Priests and Religious: Description of the Problem from a Church Perspective", in *Canonical Studies*, 18 (2004), 38.

³⁶ Cf. R. E. Jenkins, "On the Suitability of Establishing Clerical Sexual Abuse of Minors (canon 1395 § 2) as an Irregularity *Ex Delicto* to the Reception of Orders", in *Periodica*, 94 (2005), 333-334.

³⁷ There are others having the same opinion for example see, D. G. Astigueta, "La persona e i suoi diritti nelle norme sugli abusi sessuali", in *Periodica*, 93 (2004), 636-637.

³⁸ Cf. C. J. Scicluna, "The Procedure and Praxis of the Congregation for the Doctrine of Faith Regarding the *Graviora Delicts*", in P. M. Dugan (ed.), *The Penal Process and Protection of Rights in Canon Law*, Montreal, 2005, 239.

³⁹ Cf. F. G. Morrissey, "Application of Penal Law in Cases of Sexual Abuse of Minors", in *Eastern Legal Thought*, 2 (April 2003), 82-102; Prior to *SST* this was discussed (G. Ingels, "Dismissal from the Clerical State: An Examination

2010 Modification of SST: On 21 May 2010, Benedict XVI approved the modifications made by the CDF on the *Normae de gravioribus delictis*. About this modification, the CDF in its letter to the bishops states:

Nine Years after the promulgation of the Apostolic letter *Motu Proprio data Sacramentorum sanctitatis tutela* regarding the norms *de gravioribus delictis* reserved to the Congregation for the Doctrine of Faith, this dicastery held it necessary to proceed with a reform of the above-mentioned text, amending it not in its entirety but only in certain areas in order to render the text more useful.⁴⁰

The modification is only in few areas in an effort to improve the application of the law.⁴¹ The publication of the new norms provides us with an official and updated legal text which is valid for the whole Church.⁴² The new *Normae de gravioribus delictis* is divided into two major sections. Part one is "substantive norms" explaining the general competence of the CDF, identifying delicts reserved to it, and addressing the prescription period of the delicts. Part two speaks about the "procedural norms" and it is divided into two titles.

The modifications of substantive norms directly pertaining to abuse of minors are found in the articles 6:

§ 1 The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:

1° the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.

The first part of this article is similar to the article four of the original SST 2001. But adds a new specification: "in this case, a person who habitually has the imperfect use of reason is to be considered

of the Penal Process", in *Studia canonica*, 33 [1999], 169-212; G. Ingels, "Protecting the Right and Privacy When Examining Issues Affecting the Life and Ministry of Clerics and Religious", in *Studia canonica*, 34 [200], 439-466).

⁴⁰ CDF, Letter to Bishops of the Catholic Church and to the Ordinaries and Hierarchs, Regarding Modifications Introduced in the Revised *Normae de gravioribus delictis*, 21 May 2010, in *Origins*, 40/10 (2010), 145-146.

⁴¹ CDF, "Historical Introduction for the Revised Norms on Dealing with Clerical Sex Abuse of Minors and other Grave Offences", 154.

⁴² Cf. F. Lombardi, "The Significance of the Revised Norms on Dealing with Clerical Sex Abuse of Minors and other Grave Offences", in *Origins*, 40/10 (2010), 154.

equivalent to a minor.”⁴³ One of the novelties introduced by the revised norms is establishing parity between the abuse of mentally disabled people and that of the minors. Thus, the definition of minor in the new norm includes, those who habitually lack the use of reason.⁴⁴ It reflects the discipline of canon 99 of the 1983 Code, which legislates that one who habitually lacks the use of reason is not responsible for self and is equated with an infant. Canon 97 §2 defines an infant as a minor under the age of seven; such a minor is not considered responsible for self (*non sui compos*).⁴⁵ Therefore, these developmentally disabled persons, though they are over the age of eighteen, are considered equivalent to a minor for the purpose of a judicial or administrative determination of sexual abuse by cleric in a given situation. This more expansive approach to possible victims represents an effort the Church to deal more effectively and justly with a broader range of victims. To clarify the nature and effect of the disability, the use of expert is very pertinent in such case.⁴⁶

The document *Vos estis lux mundi* stresses the importance of protecting minors (anyone under 18) and vulnerable persons. Here the term vulnerable is used and the term ‘who habitually lacks the use of reason’ is not found. The second paragraph gives the meaning of the term vulnerable. From the meaning given in the second paragraph of the first article, it is clear that the term vulnerable is a broad category than those who habitually lack the use of reason. Going by the rules of

⁴³ Most of the English translations give “those who habitually lack the use of reason.” (CDF, A Brief Introduction of the Modifications Made in the *Normae de gravioribus delictis*, Reserved to the CDF, B. 14, in in *Studies in Church Law*, 6 [2010], 25; in *Origins*, 40/10 [2010]; in http://www.vatican.va/resources/r_esources_norme_en.html.) But according to T. J. Green, a better translation would be “those who habitually has the imperfect use of reason.” The original Latin is: “delictum contra sextum Decalogi praeceptum cum minore infra aetatem duodeviginti annorum a clerico commissum; in hoc numero minori aequiparatur persona quae imperfecto rationis usu habitu pollet.” (T. J. Green, “*Sacramentorum sanctitatis tutela*: Reflections on the Revised May 2010 Norms on More Serious Delicts”, 139).

⁴⁴ Cf. F. Lombardi, “The Significance of the Revised Norms on Dealing with Clerical Sex Abuse of Minors and other Grave Offences”, 155; G. J. Woodall, *A Passion for Justice: An Introductory Guide to the Code of Canon Law*, Leominster, 2011, 559.

⁴⁵ Cf. J. A. Renken, “*Normae de gravioribus delictis*: 2010 Revised Version Text and Commentary”, in *Studies in Church Law* 6 (2010), 79.

⁴⁶ Cf. T. J. GREEN, “*Sacramentorum sanctitatis tutela*: Reflections on the Revised May 2010 Norms on More Serious Delicts”, 139.

strict interpretation one can conclude that only those listed in the category of *graviora delicta* reserved to CDF need to follow the procedure for the reserved delicts, for other delicts, follow the procedure applicable to them as per the Codes of Canon Law.

iii) Child Pornography

The third delict against the sixth commandment of decalogue given is child pornography. Accordingly, the production, exhibition, possession, distribution are punishable offences. Recruiting or inducing a minor or vulnerable person to participate in pornographic exhibitions is punishable delict against the sixth commandment of decalogue.

Child pornography is explicitly mentioned in the 2010 *Normae de gravioribus delictis*. It is a further jurisprudential development seen in the 2010 modification. Article 6 §1, 2° gives pornography as an offence against sixth commandment which is reserved to CDF:

2° the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology;

§2 A cleric who commits the delicts mentioned above in §1 is to be punished according to the gravity of his crime, not excluding dismissal or deposition.⁴⁷

Catechism of the Catholic Church describes:

Pornography consists in removing real or simulated sexual acts from the intimacy of the partners, in order to display them deliberately to third parties. It offends against chastity because it perverts the conjugal act, the intimate giving of spouses to each other. It does grave injury to the dignity of participants (actors, vendors, the public), since each one becomes an object of base pleasure and illicit profit for others. It immerses all who are involved in the illustration of a fantasy world. It is a grave offence.⁴⁸

What was reserved to CDF as *graviora delicta* is the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen for purposes of sexual gratification, by whatever means or using whatever technology.

⁴⁷ Revised *Normae de gravioribus delictis*, Article 6.

⁴⁸ *Catechism of the Catholic Church*, no. 2354.

According to the law such actions (acquisition, possession, or distribution of child pornography) becomes an offence if they are committed “for the purpose of sexual gratification.” In the original Latin text, it is mentioned as *clericus turpe patrata*. The words *turpis*, *libidinos* and *obscaenus* have the similar meaning in the canonical tradition and they were interchangeably used to represent one of the objective elements of an offence against sixth commandment, which means, the content of pornography is unmistakably obscene.⁴⁹ The legislator penalizes the acquisition, possession or distribution of pornographic images of minor under the age of fourteen by a cleric for the purpose of sexual gratification.⁵⁰ It is going against the personal privacy. It may be done by whatever means and or through the use of whatever technology.⁵¹ The inherent purpose of pornography always is to incite a person to seek sexual gratification, but there could be an exception when it is having a decent or *bona fide* purpose. That is, when they are used for medicinal, scientific, educational, judicial or similar purpose. According to article 6 §1, 2°, it would not be a punishable offence, if a cleric acquired, possessed or distributed pornographic images of minors, if there is a legitimate purpose. For example, a priest delegated by the Ordinary to conduct the preliminary investigation in a case of sexual abuse of a minor, may acquire and possess such image for the purpose of the investigation. If they are handed over to the Ordinary, the distribution has occurred. But none of these acts would be a punishable offence, since they are for a legitimate purpose.⁵²

If the one committing this delict is not a cleric, or if there are cases of the pornography of a minor above the age of fourteen committed by a cleric before 1 January 2020, they are not cases reserved to CDF. They are delicts but they need to be treated like the other cases which are not reserved to CDF.

⁴⁹ Cf. M. L. Bartchak, “Child Pornography and the Grave Delict of an Offence against the Sixth Commandment of the Decalogue Committed by a Cleric with a Minor”, in *The Jurist*, 72 (2012), 192.

⁵⁰ Cf. F. R. Aznar Gil, “Los ‘graviora delicta’ reservados a la congregación para la doctrina de la fe. texto modificado (2010)”, 300; D. Cito, “Le nuove norme sui *delicta graviora*”, in *Ave Maria International Law Journal*, Fall (2011), 133-134.

⁵¹ Cf. T. J. Green, “*Sacramentorum sanctitatis tutela*: Reflections on the Revised May 2010 Norms on More Serious Delicts”, 139.

⁵² Cf. M. L. Bartchak, “Child Pornography and the Grave Delict of an Offence against the Sixth Commandment of the Decalogue Committed by a Cleric with a Minor”, 192.

Vos estis lux mundi uses the terms production, exhibition, possession and distribution. There is a slight change in the wording. This document does not use the term acquisition, but uses the terms production and exhibition.

Production can be explained as the act of creating or manufacturing. Producing pornography of a minor or a vulnerable by a cleric or a member of the Institute of Consecrated Life or Society of Apostolic Life is a canonical delict.

Exhibition could be explained as showing something for someone to view. Therefore, showing the pornography of a minor to any one is a canonical delict for the persons mentioned in article one of this document.

The explicit description of pornography in terms of images of minors "by whatever means or whatever technology" is one of the significant specification in the 2010 *Normae de gravioribus delictis*, article 6 §1, 2^o.⁵³ It should be noted that as a result of advancement of technology the images can be generated or altered. The teaching of the Church is that the use of various technologies to manipulate or to enhance images which are obscene cannot be defended or justified in the name of art or culture.⁵⁴

Law on 'Possession' has its origin in the Roman law concerning *possessio*, which formed the basis for ownership or rights pertaining to property and material goods. However, possession and ownership are not the same. It is possible for the owner of an object not to actually or physically possess that object, and it is possible for a person to possess, control, or use an object and not to own it. In case of child pornography, it is not the ownership that is relevant, but the use and enjoyment.⁵⁵ Possession is the detention or use of a physical thing with the intension to hold it as one's own.⁵⁶ In this sense, the term *detentio* is

⁵³ Only images are mentioned and no mention is made of the written works. The term 'image' would include photography, cinematography or videography, but not written works, unless include pornographic images. (Cf. M. L. Bartchak, "Child Pornography and the Grave Delict of an Offence against the Sixth Commandment of the Decalogue Committed by a Cleric with a Minor", 193).

⁵⁴ *Inter mirifica*, 6-7.

⁵⁵ Cf. M. L. Bartchak, "Child Pornography and the Grave Delict of an Offence against the Sixth Commandment of the Decalogue Committed by a Cleric with a Minor", 209-210.

⁵⁶ Cf. B. A. Garner (ed.), *Black's Law Dictionary*, St. Paul MN., 2009, 1281.

used in the 2010 *Normae de gravioribus delictis*, which has explicitly established possession of child pornography as a punishable offence in article 6 §1, 2°. To retain such prohibited material means to keep it in one's possession permanently or temporarily.⁵⁷ By whatever means including electronic means, if a person mentioned in first paragraph of the article one possesses pornographic material of minors, it constitutes a delict.⁵⁸

According to article 6 §1, 2° of the 2010 *Normae de gravioribus delictis*, the distribution of child pornography by a cleric is established as a punishable offense. The Latin text used the term *divulgatio*. *Lenocinium* is another word in legal vocabulary, which can be translated as 'pandering.' *Lenocinium* is an offence involving physical persons (for example, procuring a prostitute by threats, promises or inducing others to engage in immoral activities), whereas *divulgatio*, as prescribed in article 6 §1, 2° of the 2010 *Normae de gravioribus delictis*, involves distribution of obscene images of minors.⁵⁹ It is not a private activity because viewing, acquiring, or processing child pornography encourages the illicit activity of those who produce it and distribute it.⁶⁰

The recruitment to child pornography is also a punishable offence in canon law. Recruiting to child pornography can be explained as the process of hiring a child to make pornographic works. Inducing is persuading someone to do something. Sometimes recruitment includes also persuading. This can be by various ways like offering money, brain washing, by blackmailing, etc.

Rescript of 2019: The Supreme Pontiff in an audience granted to the Cardinal Secretary of State and the Prefect CDF on 4 October 2019 has decided to amend this law. This derogation was signed by the above-mentioned Cardinals on 3 December 2019 and was made public on 17

⁵⁷ Cf. M. L. Bartchak, "Child Pornography and the Grave Delict of an Offence against the Sixth Commandment of the Decalogue Committed by a Cleric with a Minor", 210-211

⁵⁸ Cf. C. J. Scicluna, "The Procedure and Praxis of the Congregation for the Doctrine of Faith Regarding *Graviora delicta*", 238.

⁵⁹ Cf. M. L. Bartchak, "Child Pornography and the Grave Delict of an Offence against the Sixth Commandment of the Decalogue Committed by a Cleric with a Minor", 212-213.

⁶⁰ Cf. M. Taylor and E. Quayle, *Child Pornography: An Internet Crime*, New York, 2003, 197-198.

December 2019 and has taken effect from 1 January 2019.⁶¹ Article 1 of the document states:

Art. 6 §1, 2° *Sacramentorum sanctitatis tutela* is replaced in its entirety by the following text: 'The acquisition, possession or distribution by a cleric of pornographic images of minors under the age of eighteen, for purposes of sexual gratification, by whatever means or using whatever technology'.⁶²

There is derogation in the law here. As per the modification, for the delict regarding pornography the age of minor is raised from fourteen to eighteen. It has taken effect from 1 January 2019.

b) Conducts of Actions or Omissions to Interfere with or Avoid Investigations

Second broad division of the delict given in the first paragraph is actions and omissions of the authorities in the Church in order to interfere with or to avoid civil or canonical investigations for the delicts referred to in the previous section, that is, forcing some one for sexual acts, sexual abuse of minors or vulnerable and the delicts of child pornography.

According to canon law, if any one abuses an ecclesiastical office or functions, that person is to be punished according to the gravity of the act or omission, not excluding the removal from the office.⁶³ In the year 2016, the apostolic letter issued *motu proprio Come una madre amorevole*⁶⁴ established that one of the "grave reasons" for the removal from the office is the negligence of a bishop and those equalant to bishops in the exercise of his office, and in particular in relation to cases of sexual abuse inflicted on minors and vulnerable adults. It decreed:

§1. The diocesan Bishop or Eparch, or one who even holds a temporary title and is responsible for a Particular Church, or other community of faithful that is its legal equivalent, according to canon 368 CIC or canon 313 CCEO, can be legitimately removed

⁶¹ Rescriptum Ex Audientia SS.MI: Rescript of the Holy Father Francis to introduce some amendments to the *Normae de gravioribus delictis*, 3 December 2019, in <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/12/17/191217a.html>, accessed on 26/12/2019.

⁶² Rescript of the Holy Father Francis to introduce some amendments to the *Normae de gravioribus delictis*, 3 December 2019, Article 1.

⁶³ Canons 1389 CIC 1983; 1464 CCEO 1990.

⁶⁴ Francis, *Motu Proprio Come una madre amorevole*, 4 June 2016 in AAS 108 (2016), 715-717.

from this office if he has through negligence committed or through omission facilitated acts that have caused grave harm to others, either to physical persons or to the community as a whole. The harm may be physical, moral, spiritual or through the use of patrimony.

§2. The diocesan Bishop or Eparch can only be removed if he is objectively lacking in a very grave manner the diligence that his pastoral office demands of him, even without serious moral fault on his part.

§3. In the case of the abuse of minors and vulnerable adults, it is enough that the lack of diligence be grave.

§4. The Major Superiors of Religious Institutes and Societies of Apostolic Life of Pontifical Right are equivalent to diocesan Bishops and Eparchs.⁶⁵

The negligence by a bishop or one equal to bishop in acting in legal way against the cases of abuse of minors or vulnerable persons constitutes a grave reason for the removal from office. *Vos estis lux mundi* states that conduct carried out by actions or omission intended to interfere with or avoid civil or canonical investigations regarding delicts against the sixth commandment of the decalogue referred in the first part of the same article also come under the scope of the application of these norms. In fact, this delict refers to those who hold positions of particular authority in the Church, and who, instead of pursuing abuses committed by others, have hidden them, and instead of protecting the victims have protected alleged offenders.⁶⁶ Since it is not a delict reserved to CDF the competent dicastery should take up the matter as per the procedures given in the law. It should be also noted that all the Major Superiors of Religious Institutes and Societies of Apostolic Life of Pontifical Right are not referred in article 6 of this document, it mentions only the Supreme Moderators of the same, and the Supreme Moderators of the monasteries *sui iuris*. Therefore, the procedure given at the second part of *Vos estis lux mundi* is applicable for the Supreme Moderators of Religious Institutes and Societies of Apostolic Life of Pontifical Right and the Supreme Moderators of the monasteries *sui iuris*.

⁶⁵ *Come una madre amorevole*, Article 1.

⁶⁶ Cf. A. Tornielli, "Pope Francis' Motu Proprio *Vos estis lux mundi*: New norms for the whole Church against those who abuse or cover up", in *L'Osservatore Romano*, English Edition, 10 May 2019, 3.

§2 Clarification of Three Terms

The second paragraph of the first canon clarifies three terms by giving the meaning of these terms for the purpose of this document.

a) Minor

For the purpose of these norms, a minor means any person who has not completed eighteen years of age or those considered to be equalant to a minor by law. It is almost negative presentation of canon 97 of CIC 1983 which stipulates that any person who completes the eighteenth year of age reaches majority; a person is a minor if he is below this age. And canon 99 says anyone habitually lacks the use of reason is equated with infants by law because he is considered not responsible for oneself (*non sui compos*). The previous sections dealing with the abuse of minor has already discussed about the changes that took place in canon law with regard to the age.

b) Vulnerable Person

For the purpose of these norms, vulnerable person is any person who is in a state of sickness which is physical or mental deficiency, or deprivation of personal freedom, which actually, even occasionally, limits their ability to understand or will or in any case of resistance to an offence. In other words, a vulnerable person is in a position or situation from which he or she cannot mount an adequate defence. Therefore, the Church wants to safeguard and protect the rights of every individual who are defenceless due to various reasons.

c) Child Pornography

Child pornography is any representation of a minor, by the use of any means, involved in explicit sexual activities, whether real or simulated, and any representation of genital organs of minors for primarily sexual purposes.

2. Reception of Reports and Data Protection

Article 2

§1. Taking into account the provisions that may be adopted by the respective Episcopal Conferences, by the Synods of the Bishops of the Patriarchal Churches and the Major Archiepiscopal Churches, or by the Councils of Hierarchs of the Metropolitan Churches *sui iuris*, the Dioceses or the Eparchies, individually or together, must establish within a year from the entry into force of these norms, one or more public, stable and easily accessible systems for submission of reports, even through the institution of a specific ecclesiastical

office. The Dioceses and the Eparchies shall inform the Pontifical Representative of the establishment of the systems referred to in this paragraph.

§2. The information referred to in this article is protected and treated in such a way as to guarantee its safety, integrity and confidentiality pursuant to canons 471, 2° CIC and 244 §2, 2° CCEO.

§3. Except as provided for by article 3 §3, the Ordinary who received the report shall transmit it without delay to the Ordinary of the place where the events are said to have occurred, as well as to the Ordinary of the person reported, who proceed according to the law provided for the specific case.

§4. For the purposes of this title, Eparchies are equated with Dioceses and the Hierarch is equated with the Ordinary.

The second article which deals with the reception of reports and data protection has four paragraphs.

§1. System to be Established at Local Level

The first paragraph directs dioceses or eparchies individually or together to establish within a year from the entry into force of these norms, one or more stable systems that are easily accessible to the public to submit reports, even though the establishment of a special ecclesiastical office. But in order to establish this accessible system they need to take into account the provisions that are adopted by the Episcopal Conferences, by Synod of Bishops either of the Patriarchal Churches and of the Major Archiepiscopal Churches, or by the council of hierarch of the Metropolitan Church *sui iuris*. After establishing this accessible system, the dioceses or the eparchies are directed to inform the pontifical representative about its establishment. There is no specification about what these “systems” consist of, because it leaves operational choices to each diocese; because these may differ according to various cultures and local conditions. The basic requirement is that anyone who has suffered abuse can have recourse to the local Church, with the assurance of being well received, protected from retaliation, and that their reports being treated with the utmost seriousness.⁶⁷

The Latin dioceses are to take into account of the provisions given by their respective Episcopal Conference. Following the procedure given

⁶⁷ Cf. A. Tornielli, “Pope Francis’ Motu Proprio *Vos estis lux mundi*: New norms for the whole Church against those who abuse or cover up”, 3.

in canon 455 CIC 1983, the Episcopal Conference might have given certain provisions. The dioceses are obliged to follow these provisions.

For the Oriental Catholic Churches, depending on the different status of the Church *sui iuris* the consulting authority varies. CCEO 1990 gives a description of 'Church *sui iuris*' in its canon 27. It states: "A community of Christian faithful united by a hierarchy according to the norm of law which the supreme authority of the Church expressly or tacitly recognizes as *sui iuris* is called in this Code a Church *sui iuris*."⁶⁸ This is a term used to enable the Oriental Catholic Churches to secure in a juridical way their own various disciplinary patrimony.⁶⁹ CCEO 1990 divides the Churches *sui iuris* into four grades in the Oriental Catholic Church and they are Patriarchal, Major Archiepiscopal, Metropolitan or other Church *sui iuris*.⁷⁰

A Patriarchal Church is a Church *sui iuris* which is presided over by a Patriarch. Because according to CCEO 1990 in the most ancient tradition of the Church, recognized by the first ecumenical councils, the Patriarchal institution existed in the Church; therefore a special honor is given to the Patriarchs of the Oriental Catholic Churches, each of whom presides over his Patriarchal Church as father and head.⁷¹ A Patriarch is a bishop who has power over all bishops including metropolitans and other Christian faithful of the Church *sui iuris* over which he presides in accordance with the norm of law approved by the supreme authority of the Church.⁷²

A Major Archiepiscopal Church is a Church *sui iuris* presided over by a Major Archbishop. He is the Metropolitan of a See determined or recognized by the Supreme Authority of the Church, to preside over an entire Eastern Church *sui iuris* not endowed with the Patriarchal title.⁷³ With regard to his power the CCEO 1990 States: "What is stated

⁶⁸ Canon 27 CCEO 1990.

⁶⁹ Cf. M. Kuchera, "A Juridical Safeguard and Bulwark for the Oriental Catholic Family", in Pontificio Consilio per i Testi Legislativi, *L'attenzione pastorale per i fedeli orientali*, Vatican City, 2017, 180-181.

⁷⁰ Canon 174 CCEO 1990; Cf. G. Thanchan, *The Juridical Institution of Major Archbishop in Oriental Canon Law*, Bangalore, 2017, 184; M. Souckar, "The Principle of Subsidiarity in the *Codex Canonum Ecclesiarum Orientalium*", in *CLSA Proceedings*, 65 (2003), 225.

⁷¹ Canon 55 CCEO 1990; Cf. G. Nedungatt, *A Companion to the Eastern Code*, Rome, 1994, 32.

⁷² Canon 56 CCEO 1990.

⁷³ Canon 151 CCEO 1990; Cf. G. Thanchan, *The Juridical Institution of Major Archbishop in Oriental Canon Law*, 184.

in common law concerning Patriarchal Churches or Patriarchs is understood to be applicable to Major Archiepiscopal Churches or Major Archbishops, unless the common law expressly provides otherwise or it is evident from the nature of the matter."⁷⁴

A Metropolitan Church *sui iuris* is a Church *sui iuris* "presided over by a Metropolitan of a determined See" (cf. CCEO c. 155) which is established as such by the supreme authority of the Church. He is appointed by the Roman Pontiff and assisted by a council of hierarchs according to the norm of law.⁷⁵ Only the supreme authority of the Church has the right to erect, modify, suppress and define the territorial boundaries of Metropolitan Churches *sui iuris*.⁷⁶

What comes under the category of 'Other Churches *sui iuris*' is a Church *sui iuris*, which is neither Patriarchal, Major Archiepiscopal nor Metropolitan but entrusted to a Hierarchy to preside over it, in accordance with the norm of common law and particular law established by the Roman Pontiff.⁷⁷

§2. Protection of Safety, Integrity and Confidentiality

The second paragraph of the second article assures the safety, integrity and confidentiality of the information. They are protected in accordance with canons 471, 2° CIC 1983 and 244 §2, 2° CCEO 1990. Both the canons impose two obligations: one to promise faithful fulfilment of the obligations of the office and two, to observe the confidentiality within the limits determined by the law. The obligation of keeping the necessary confidentiality could be seen as an expectation of faithful fulfilment of the office.⁷⁸ This would mean that the information received about such offences by the persons involved in the investigation of such delicts are to guarantee safety, integrity and confidentiality. They should not share such information with third parties unrelated to the case.

⁷⁴ Canon 152 CCEO 1990.

⁷⁵ Cf. G. Thanchan, *The Juridical Institution of Major Archbishop in Oriental Canon Law*, 187.

⁷⁶ Canon 155 CCEO 1990.

⁷⁷ Canon 174 CCEO 1990; Cf. G. Nedungatt, *A Companion to the Eastern Code*, 60.

⁷⁸ Cf. J. P. Beal *et alii* (eds), *New Commentary on the Code of Canon Law*, 624-625.

§3. Initial Procedure at the Local Level

The third paragraph of the second article states that the Ordinary who receive the report about any of the delicts mentioned in article one should transmit without delay to the Ordinary of the place where the events would have occurred as per the complaint as well as to the proper Ordinary of the accused, he is to proceed according to the law provided for the specific case.⁷⁹ Depending on the type of cases, the Ordinary should follow the procedures and if it is a case reserved to the CDF, he should follow the procedures given for *graviora delicta* cases. The exception is for the persons referred in article 3 §3. They are the persons indicated in article 6. For them, special provisions are given in the second tile of this document from article 6.

§4. Equation of Terms

The fourth paragraph of the second article clarifies that in the first title the terms eparchies are equated with dioceses and the hierarch is equated with the Ordinary. Because the term 'eparchy' used in CCEO corresponds to the term 'diocese' in CIC 1983 and 'Hierarch' is the Eastern counterpart of the term 'Ordinary' of CIC 1983.⁸⁰ Here in order to avoid repetition and confusion, the Western counterpart of the Eastern terms are used. In the previous paragraph only the term Ordinary is used, but for the Oriental Catholic Churches it is equal to people referred as hierarchs in CCEO 1990.

3. Reporting

Article 3

§1. Except as provided for by canons 1548 §2 CIC and 1229 §2 CCEO, whenever a cleric or a member of an Institute of Consecrated Life or of a Society of Apostolic Life has notice of, or well-founded motives to believe that, one of the facts referred to in article 1 has been committed, that person is obliged to report promptly the fact to the local Ordinary where the events are said to have occurred or to another Ordinary among those referred to in canons 134 CIC and 984 CCEO, except for what is established by §3 of the present article.

⁷⁹ Cf. J. I. Arrieta, "Explanatory Note: Motu Proprio *Vos estis lux mundi*", accessed on 07/11/2019.

⁸⁰ Cf. Z. Rihmer, "Remarks on the Latin of the *Codex Canonum Ecclesiarum Orientalium*", in *Eastern Canon Law*, 1 (2012), 140.

§2. Any person can submit a report concerning the conduct referred to in article 1, using the methods referred to in the preceding article, or by any other appropriate means.

§3. When the report concerns one of the persons indicated in article 6, it is to be addressed to the Authority identified based upon articles 8 and 9. The report can always be sent to the Holy See directly or through the Pontifical Representative.

§4. The report shall include as many particulars as possible, such as indications of time and place of the facts, of the persons involved or informed, as well as any other circumstance that may be useful in order to ensure an accurate assessment of the facts.

§5. Information can also be acquired *ex officio*.

§1. Obligation to Report

Article three deals with the procedure for the reporting. Whenever a cleric or a member of an Institute of consecrated Life or of a Society of Apostolic Life has received a notice of or just reasons to believe that, one of the delicts mentioned in article 1 is committed, that person has the obligation to promptly report the fact to the local Ordinary where the event would have happened or to another Ordinary among those mentioned in canons 134 of CIC 1983 or 984 of CCEO 1990. There are two exemptions to this. First one is the people who are exempted to respond to the information that they receive mentioned in canons 1548 §2 of CIC 1983 and 1229 §2 of CCEO 1990. As per this canon:

Without prejudice to the prescript of can. 1550, §2, n. 2, the following are exempted from the obligation to respond:

- 1) clerics regarding what has been made known to them by reason of sacred ministry; civil officials, physicians, midwives, advocates, notaries, and others bound by professional secrecy even by reason of having given advice, regarding those matters subject to this secrecy;
- 2) those who fear that from their own testimony ill repute, dangerous hardships, or other grave evils will befall them, their spouses, or persons related to them by consanguinity or affinity.

According to canon 1550, §2, n. 2,⁸¹ the confessors and anyone who received the knowledge through the confession are incapable of being

⁸¹ §2. The following are considered incapable: [...]

a witness to the case. So, they are not only exempted but they are incapable. The second exemption is for the cases established by §3 of this same article. For them the matter is to be reported to the competent authority referred in title two of this Motu Proprio and the procedure to be followed too is specified in title two.

§2. Person Capable of Submitting the Report

The second paragraph of the article 3 gives freedom to any person to submit the report concerning any of the delicts indicated in article 1 either by using the method referred in the previous article or through any other adequate means. It remains clear, that anyone, even if he or she does not belong to the Church, can make use of such established systems to report such delicts.⁸²

§3. The Special Procedure to be followed for Certain Authority

The third paragraph of the article 3 specifies if the report concerns one of the persons referred in article 6 of *Vos estis lux mundi* (bishops and others who are equivalent to them), it is to be addressed to the competent authority identified in article 8 and 9. The reports can be sent either through the pontifical representative or directly to the competent dicastery of the Holy See.

§4. Content of the Report

The fourth paragraph of the article 3 indicates what are the particulars that are to be included in the report. The report should have as many particulars with possible details like time and place of the fact, the persons involved, the person informed as well as any other circumstance or details which may become useful in order to ensure an accurate evaluation of the facts.

§5. Ex officio Information

The fourth paragraph of the article 3 gives opportunities for those in ecclesiastical office to acquire the information *ex officio*.

2) priests regarding all matters which they have come to know from sacramental confession even if the penitent seeks their disclosure; moreover, matters heard by anyone and in any way on the occasion of confession cannot be accepted even as an indication of the truth.

⁸² Cf. J. I. Arrieta, "Explanatory Note: Motu Proprio *Vos estis lux mundi*", accessed on 07/11/2019.

4. Protection of the Person Submitting the Report

Article 4

§1. Making a report pursuant to article 3 shall not constitute a violation of office confidentiality.

§2. Except as provided for by canons 1390 CIC and 1452 and 1454 CCEO, prejudice, retaliation or discrimination as a consequence of having submitted a report is prohibited and may constitute the conduct referred to in article 1 §1, letter b).

§3. An obligation to keep silent may not be imposed on any person with regard to the contents of his or her report.

The fourth article of the document deals with the protection of the persons submitting the report.

§1. Not Constituting a Violation of Office Confidentiality

The first paragraph clearly states that making a report according to Article 3 of this document does not constitute a breach of professional secrecy or in other words it is not a violation of the confidentiality of the office.

§2. No Prejudice, Retaliation or Discrimination to the Person Reporting

The second paragraph of the fourth article states prejudice, retaliation or discrimination shown to a person for the fact of having submitted a report is prohibited and it may constitute the conduct referred to in article 1 §1, b).

§3. Not Bound by the Obligation to keep Silence

As per the third paragraph to those who make the report an obligation to keep silence cannot be imposed with regard to the content of the report. On 6 December 2019 the Supreme Pontiff through a rescript decided to abolish pontifical secrecy in cases of the sexual abuse of minors, sexual violence and child pornography.⁸³ This instruction in its number 5 states: “The person who files the report, the person who alleges to have been harmed and the witnesses shall not be bound by

⁸³ Rescriptum Ex Audientia SS.MI: Rescript of the Holy Father Francis to promulgate the Instruction on the Confidentiality of Legal Proceedings, 6 December 2019 in <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/12/17/191217b.html>, accessed on 26/12/2019.

any obligation of silence with regard to matters involving the case”.⁸⁴ Therefore, the persons involved in such cases are not bound by the obligation to keep silence.

5. Care for Persons

Article 5

§1. The ecclesiastical Authorities shall commit themselves to ensuring that those who state that they have been harmed, together with their families, are to be treated with dignity and respect, and, in particular, are to be:

- a) welcomed, listened to and supported, including through provision of specific services;
- b) offered spiritual assistance;
- c) offered medical assistance, including therapeutic and psychological assistance, as required by the specific case.

§2. The good name and the privacy of the persons involved, as well as the confidentiality of their personal data, shall be protected.

Article 5 deals with the care of the persons who are harmed by such delicts.

§1. Commitment Towards the Victims

From the beginning, the persons who claim to be victims of the indicated delicts must be welcomed and assisted, and their privacy must be protected.⁸⁵ Therefore, the ecclesiastical authorities are to commit themselves to make sure that the victims, together with their families, are treated with dignity and respect. Following are the particular ways in which they may be cared for.

a) To Be Welcomed, Listened to and Supported

Victims and their families are to be welcomed, listened to and supported, even through the provision of specific services. It is a fact that in the past, there was a failure to listen to the distressing cries of those who were abused as children by clerics. Many who wanted to speak about what had happened to them, found that no one would listen to them. Leaders of the Church need to listen with openness, sensitivity and care to those who have been abused. The Church personnel need to make themselves personally available to meet with

⁸⁴ Instruction on the Confidentiality of Legal Proceedings, 5.

⁸⁵ Cf. J. I. Arrieta, “Explanatory Note: *Motu Proprio Vos estis lux mundi*”, accessed on 07/11/2019.

the survivors of abuse and to listen attentively to their experience.⁸⁶ The Ordinary or his representative should offer to meet with the victims and their families to listen with patience and compassion and to share with them the profound sense of solidarity and concern. The victim should feel vindicated that the wrongdoing has been acknowledged and that the perpetrator as well as the Church authorities is sorry about it.⁸⁷ It is also vital that parish communities become places of welcome, listening and supports for those who have suffered physical and sexual abuse by clerics. What has happened within the Church need to be acknowledged openly and honestly by all. Thus, the parish community has a key role to play in giving expression to the commitment of the Catholic Church to addressing the sexual abuse of minors and bringing healing and renewal to all, who have been harmed.⁸⁸

b) Spiritual Assistance

Sexual abuse of minors by the clergy has a profoundly negative impact on the faith of those abused and on that of their families. Many accusers have stated that the Church has failed to offer sufficient help to work through these particular consequences of their abuse. Therefore, the local Church needs to have a structure of spiritual support for those dealing with the issues of faith following the trauma of sexual abuse by clergy.⁸⁹ All the members of the Church have a role to play with regard to the faith formation of its members (canon 774 § 1). In order to help the victims to overcome the lose of faith, the local Church may make use of the various means of catechetical formation by employing all those aids, educational resources and means of social communication which seem more effective (canon 779). Spiritual accompaniment is an essential thing that we need to give to the survivors of abuse. Together with trained lay people, the clerics should assist those dealing with the issues of faith following the trauma. An experienced spiritual director will be a great help to the survivors.

⁸⁶ Cf. Irish Catholic Bishop's Conference, *Towards Healing and Renewal*, 9.

⁸⁷ Cf. The Missionaries of St. Francis de Sales, *Integrity in Consecrated Life and Pastoral Ministry: Code of Ethics of the Missionaries of St. Francis de Sales*, Rome, 2010, 26.

⁸⁸ Cf. Irish Catholic Bishop's Conference, *Towards Healing and Renewal*, 9.

⁸⁹ Cf. Irish Catholic Bishop's Conference, *Towards Healing and Renewal*, 10.

c) Medical Assistance

Very often, the poor and vulnerable are the victims of abuse. They may not be in a position to get help from a physician. According to the situations, the Ordinary should see that such victims are supported financially for their treatment and other needs of survival. In some countries, because of the paucity of resources, the dioceses have adopted various methods of raising funds.⁹⁰

The impact of the sexual abuse of children can be very serious and long lasting. Hence it is important for the victims to feel that justice has been done to them and the victims should be given an opportunity to state what exactly has happened. In all charity and justice to the victims, with a pastoral solicitude, the Ordinary is to do his utmost to reach out to the victims of sexual abuses, their families and the communities affected by such abuse. If possible, the Ordinary also must arrange restitution by providing psychological and pedagogical follow-up of the victims for the purpose of healing and reconciliation.⁹¹

§2. Protection of Good Name and Privacy

The second paragraph clearly instructs to protect the good name and the privacy of the persons involved as well as the confidentiality of their personal data. Both CIC 1983 as well as CCEO 1990 express the right of the person to protect the good reputation and privacy.⁹² In certain countries, dignity and name of persons involved in the cases of the delicts mentioned in this document remain stained forever and the person ends up in suffering physical, mental and moral damage, therefore, it is necessary in fact to protect the good name of all the persons involved. Therefore, the Church authorities must exercise a great caution to protect the rights of both the accuser as well as the accused.⁹³ "The best results and the most effective resolution that we can offer to the victims, ... are the commitment to personal and collective conversion, the humility of learning, listening, assisting and protecting the most vulnerable."⁹⁴

⁹⁰ Cf. Irish Catholic Bishop's Conference, *Towards Healing and Renewal*, 13.

⁹¹ Cf. The Missionaries of St. Francis de Sales, *Integrity in Consecrated Life and Pastoral Ministry: Code of Ethics of the Missionaries of St. Francis de Sales*, 23-27.

⁹² Cf. Canons 220 CIC 1983; 23 CCEO 1990.

⁹³ Cf. J. P. Beal *et alii* (eds), *New Commentary on the Code of Canon Law*, 278.

⁹⁴ Francis, Address at the End of the Eucharistic Concelebration for the Meeting "The Protection of Minors in the Church" on 24 January 2019 in

Conclusion

Any kind of sexual abuse and especially of minors or the vulnerable is a serious violation of the physical and moral order. Because of the special rights and obligations arising from the sacred ordination for cleric or the membership in the Institutes of Consecrated Life or Societies of Apostolic life for its members, canon law allows them to be prosecuted and punished. They are subject to special canonical penalties in the area of sexual misconduct because they are called to observe perpetual continence or the evangelical counsel of chastity. Reading the signs of the time, the Church has changed its norms in order the better to keep abreast to the needs of the time. *Vos estis lux mundi* is one of the best examples of it. The first part of the document in its five articles provides us with the general norms. In fact, this brings together various delicts of sexual offences and conducts of actions or omissions to tamper with the investigations. It also demands a system to be established at the local level with the necessary protection of safety, integrity and confidentiality. Pastoral desire of the Church too is given importance by making it easier for the victims to approach the ecclesial authority for justice and make it obligatory for the authority to care for the persons with all the possible helps including spiritual and medical assistance.

Document

APOSTOLIC LETTER ISSUED MOTU PROPRIO

BY THE SUPREME PONTIFF
FRANCIS

“VOS ESTIS LUX MUNDI”

“You are the light of the world. A city set on a hill cannot be hidden” (Mt 5:14). Our Lord Jesus Christ calls every believer to be a shining example of virtue, integrity and holiness. All of us, in fact, are called to give concrete witness of faith in Christ in our lives and, in particular, in our relationship with others.

The crimes of sexual abuse offend Our Lord, cause physical, psychological and spiritual damage to the victims and harm the community of the faithful. In order that these phenomena, in all their forms, never happen again, a continuous and profound conversion of hearts is needed, attested by concrete and effective actions that involve everyone in the Church, so that personal sanctity and moral commitment can contribute to promoting the full credibility of the Gospel message and the effectiveness of the Church’s mission. This becomes possible only with the grace of the Holy Spirit poured into our hearts, as we must always keep in mind the words of Jesus: “Apart from me you can do nothing” (Jn 15:5). Even if so much has already been accomplished, we must continue to learn from the bitter lessons of the past, looking with hope towards the future.

This responsibility falls, above all, on the successors of the Apostles, chosen by God to be pastoral leaders of his People, and demands from them a commitment to follow closely the path of the Divine Master. Because of their ministry, in fact, Bishops, “as vicars and legates of Christ, govern the particular churches entrusted to them by their counsel, exhortations, example, and even by their authority and sacred power, which indeed they use only for the edification of their flock in truth and holiness, remembering that he who is greater should become as the lesser and he who is the chief become as the servant” (Second Vatican Council, Dogmatic Constitution *Lumen Gentium*, 27). What more closely concerns the successors of the Apostles concerns all those who, in various ways, assume ministries in

the Church, or profess the evangelical counsels, or are called to serve the Christian People. Therefore, it is good that procedures be universally adopted to prevent and combat these crimes that betray the trust of the faithful.

I desire that this commitment be implemented in a fully ecclesial manner, so that it may express the communion that keeps us united, in mutual listening and open to the contributions of those who care deeply about this process of conversion.

Therefore, I decree:

TITLE I GENERAL PROVISIONS

Art. 1 - Scope of application

§1. These norms apply to reports regarding clerics or members of Institutes of Consecrated Life or Societies of Apostolic Life and concerning:

a) delicts against the sixth commandment of the Decalogue consisting of:

- i. forcing someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts;
- ii. performing sexual acts with a minor or a vulnerable person;
- iii. the production, exhibition, possession or distribution, including by electronic means, of child pornography, as well as by the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions;

b) conduct carried out by the subjects referred to in article 6, consisting of actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against a cleric or a religious regarding the delicts referred to in letter a) of this paragraph.

§2. For the purposes of these norms,

a) “minor” means: any person under the age of eighteen, or who is considered by law to be the equivalent of a minor;

b) “vulnerable person” means: any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or

to want or otherwise resist the offence;

c) "child pornography" means: any representation of a minor, regardless of the means used, involved in explicit sexual activities, whether real or simulated, and any representation of sexual organs of minors for primarily sexual purposes.

Art. 2 – Reception of reports and data protection

§1. Taking into account the provisions that may be adopted by the respective Episcopal Conferences, by the Synods of the Bishops of the Patriarchal Churches and the Major Archiepiscopal Churches, or by the Councils of Hierarchs of the Metropolitan Churches *sui iuris*, the Dioceses or the Eparchies, individually or together, must establish within a year from the entry into force of these norms, one or more public, stable and easily accessible systems for submission of reports, even through the institution of a specific ecclesiastical office. The Dioceses and the Eparchies shall inform the Pontifical Representative of the establishment of the systems referred to in this paragraph.

§2. The information referred to in this article is protected and treated in such a way as to guarantee its safety, integrity and confidentiality pursuant to canons 471, 2° CIC and 244 §2, 2° CCEO.

§3. Except as provided for by article 3 §3, the Ordinary who received the report shall transmit it without delay to the Ordinary of the place where the events are said to have occurred, as well as to the Ordinary of the person reported, who proceed according to the law provided for the specific case.

§4. For the purposes of this title, Eparchies are equated with Dioceses and the Hierarch is equated with the Ordinary.

Art. 3 – Reporting

§1. Except as provided for by canons 1548 §2 CIC and 1229 §2 CCEO, whenever a cleric or a member of an Institute of Consecrated Life or of a Society of Apostolic Life has notice of, or well-founded motives to believe that, one of the facts referred to in article 1 has been committed, that person is obliged to report promptly the fact to the local Ordinary where the events are said to have occurred or to another Ordinary among those referred to in canons 134 CIC and 984 CCEO, except for what is established by §3 of the present article.

§2. Any person can submit a report concerning the conduct referred to

in article 1, using the methods referred to in the preceding article, or by any other appropriate means.

§3. When the report concerns one of the persons indicated in article 6, it is to be addressed to the Authority identified based upon articles 8 and 9. The report can always be sent to the Holy See directly or through the Pontifical Representative.

§4. The report shall include as many particulars as possible, such as indications of time and place of the facts, of the persons involved or informed, as well as any other circumstance that may be useful in order to ensure an accurate assessment of the facts.

§5. Information can also be acquired *ex officio*.

Art. 4 – Protection of the person submitting the report

§1. Making a report pursuant to article 3 shall not constitute a violation of office confidentiality.

§2. Except as provided for by canons 1390 CIC and 1452 and 1454 CCEO, prejudice, retaliation or discrimination as a consequence of having submitted a report is prohibited and may constitute the conduct referred to in article 1 §1, letter b).

§3. An obligation to keep silent may not be imposed on any person with regard to the contents of his or her report.

Art. 5 – Care for persons

§1. The ecclesiastical Authorities shall commit themselves to ensuring that those who state that they have been harmed, together with their families, are to be treated with dignity and respect, and, in particular, are to be:

- a) welcomed, listened to and supported, including through provision of specific services;
- b) offered spiritual assistance;
- c) offered medical assistance, including therapeutic and psychological assistance, as required by the specific case.

§2. The good name and the privacy of the persons involved, as well as the confidentiality of their personal data, shall be protected.

TITLE II
PROVISIONS CONCERNING BISHOPS
AND THEIR EQUIVALENTS

Art. 6 - Subjective scope of application

The procedural norms referred to in this title concern the conduct referred to in article 1, carried out by:

- a) Cardinals, Patriarchs, Bishops and Legates of the Roman Pontiff;
- b) clerics who are, or who have been, the pastoral heads of a particular Church or of an entity assimilated to it, Latin or Oriental, including the Personal Ordinariates, for the acts committed durante munere;
- c) clerics who are or who have been in the past leaders of a Personal Prelature, for the acts committed durante munere;
- d) those who are, or who have been, supreme moderators of Institutes of Consecrated Life or of Societies of Apostolic Life of Pontifical right, as well as of monasteries sui iuris, with respect to the acts committed durante munere.

Art. 7 - Competent Dicastery

§1. For the purposes of this title, "competent Dicastery" means the Congregation for the Doctrine of the Faith, regarding the delicts reserved to it by the norms in force, as well as, in all other cases and as far as their respective jurisdiction is concerned, based on the proper law of the Roman Curia:

- the Congregation for the Oriental Churches;
- the Congregation for Bishops;
- the Congregation for the Evangelization of Peoples;
- the Congregation for the Clergy;
- the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life.

§2. In order to ensure the best coordination, the competent Dicastery informs the Secretariat of State, and the other Dicasteries directly concerned, of the report and the outcome of the investigation.

§3. The communications referred to in this title between the Metropolitan and the Holy See take place through the Pontifical

Representative.

Art. 8 – Procedure applicable in the event of a report concerning a Bishop of the Latin Church

§1. The Authority that receives a report transmits it both to the Holy See and to the Metropolitan of the Ecclesiastical Province where the person reported is domiciled.

§2. If the report concerns the Metropolitan, or the Metropolitan See is vacant, it shall be forwarded to the Holy See, as well as to the senior suffragan Bishop by promotion, to whom, if such is the case, the following provisions regarding the Metropolitan apply.

§3. In the event that the report concerns a Papal Legate, it shall be transmitted directly to the Secretariat of State.

Art. 9 – Procedure applicable to Bishops of Eastern Catholic Churches

§1. Reports concerning a Bishop of a Patriarchal, Major Archiepiscopal or Metropolitan Church *sui iuris* shall be forwarded to the respective Patriarch, Major Archbishop or Metropolitan of the Church *sui iuris*.

§2. If the report concerns a Metropolitan of a Patriarchal or Major Archiepiscopal Church, who exercises his office within the territory of these Churches, it is forwarded to the respective Patriarch or Major Archbishop.

§3. In the preceding cases, the Authority who receives the report shall also forward it to the Holy See.

§4. If the person reported is a Bishop or a Metropolitan outside the territory of the Patriarchal, the Major Archiepiscopal or the Metropolitan Church *sui iuris*, the report shall be forwarded to the Holy See.

§5. In the event that the report concerns a Patriarch, a Major Archbishop, a Metropolitan of a Church *sui iuris* or a Bishop of the other Eastern Catholic Churches *sui iuris*, it shall be forwarded to the Holy See.

§ 6. The following provisions relating to the Metropolitan apply to the ecclesiastical Authority to which the report is to be forwarded based on this article.

Art. 10 – Initial duties of the Metropolitan

§1. Unless the report is manifestly unfounded, the Metropolitan

immediately requests, from the competent Dicastery, that he be assigned to commence the investigation. If the Metropolitan considers the report manifestly unfounded, he shall so inform the Pontifical Representative.

§2. The Dicastery shall proceed without delay, and in any case within thirty days from the receipt of the first report by the Pontifical Representative or the request for the assignment by the Metropolitan, providing the appropriate instructions on how to proceed in the specific case.

Art. 11 - Entrusting the investigation to a person other than the Metropolitan

§1. If the competent Dicastery considers it appropriate to entrust the investigation to a person other than the Metropolitan, the Metropolitan is so informed. The Metropolitan delivers all relevant information and documents to the person appointed by the Dicastery.

§2. In the case referred to in the previous paragraph, the following provisions relating to the Metropolitan apply to the person charged with conducting the investigation.

Art. 12 - Carrying out the investigation

§1. Once he has been appointed by the competent Dicastery and acting in compliance with the instructions received, the Metropolitan, either personally or through one or more suitable persons:

- a) collects relevant information regarding the facts;
- b) accesses the information and documents necessary for the purpose of the investigation kept in the archives of ecclesiastical offices;
- c) obtains the cooperation of other Ordinaries or Hierarchs whenever necessary;
- d) requests information from individuals and institutions, including civil institutions, that are able to provide useful elements for the investigation.

§2. If it is necessary to hear from a minor or a vulnerable person, the Metropolitan shall adopt appropriate procedures, which take into account their status.

§3. In the event that there are well-founded motives to conclude that information or documents concerning the investigation are at risk of being removed or destroyed, the Metropolitan shall take the necessary

measures for their preservation.

§4. Even when making use of other persons, the Metropolitan nevertheless remains responsible for the direction and conduct of the investigation, as well as for the timely execution of the instructions referred to in article 10 §2.

§5. The Metropolitan shall be assisted by a notary freely appointed pursuant to canons 483 §2 CIC and 253 §2 CCEO.

§6. The Metropolitan is required to act impartially and free of conflicts of interest. If he considers himself to be in a conflict of interest or is unable to maintain the necessary impartiality to guarantee the integrity of the investigation, he is obliged to recuse himself and report the circumstance to the competent Dicastery.

§7. The person under investigation enjoys the presumption of innocence.

§ 8. The Metropolitan, if requested by the competent Dicastery, informs the person of the investigation concerning him/her, hears his/her account of the facts and invites him/her to present a brief in defence. In such cases, the investigated person may be assisted by legal counsel.

§9. Every thirty days, the Metropolitan sends a status report on the state of the investigation to the competent Dicastery.

Art. 13 - Involvement of qualified persons

§1. In accordance with any eventual directives of the Episcopal Conference, of the Synod of Bishops or of the Council of Hierarchs regarding how to assist the Metropolitan in conducting the investigation, the Bishops of the respective Province, individually or together, may establish lists of qualified persons from which the Metropolitan may choose those most suitable to assist in the investigation, according to the needs of the individual case and, in particular, taking into account the cooperation that can be offered by the lay faithful pursuant to canons 228 CIC and 408 CCEO.

§2. The Metropolitan, however, is free to choose other equally qualified persons.

§3. Any person assisting the Metropolitan in the investigation is required to act impartially and must be free of conflicts of interest. If he considers himself to be in a conflict of interest or be unable to maintain the necessary impartiality required to guarantee the integrity

of the investigation, he is obliged to recuse himself and report the circumstances to the Metropolitan.

§4. The persons assisting the Metropolitan shall take an oath to fulfil their charge properly.

Art. 14 - Duration of the investigation

§1. The investigation is to be completed within the term of ninety days or within a term otherwise provided for by the instructions referred to in article 10 §2.

§2. Where there are just reasons, the Metropolitan may request that the competent Dicastery extend the term.

Art. 15 - Precautionary measures

Should the facts or circumstances require it, the Metropolitan shall propose to the competent Dicastery the adoption of provisions or appropriate precautionary measures with regard to the person under investigation.

Art. 16 - Establishment of a fund

§1. Ecclesiastical Provinces, Episcopal Conferences, Synods of Bishops and Councils of Hierarchs may create a fund, to be established according to the norms of canons 116 and 1303 §1, 1° CIC and 1047 CCEO and administered according to the norms of canon law, whose purpose is to sustain the costs of the investigations.

§2. At the request of the appointed Metropolitan, the funds necessary for the purpose of the investigation are made available to him by the administrator of the fund; the Metropolitan remain duty-bound to present an account to the administrator at the conclusion of the investigation.

Art. 17 - Transmission of the documents and the votum

§1. Having completed the investigation, the Metropolitan shall transmit the acts to the competent Dicastery, together with his votum regarding the results of the investigation and in response to any queries contained in the instructions issued under article 10 §2.

§2. Unless there are further instructions from the competent Dicastery, the faculties of the Metropolitan cease once the investigation is completed.

§3. In compliance with the instructions of the competent Dicastery, the

Metropolitan, upon request, shall inform the person who has alleged an offence, or his/her legal representatives, of the outcome of the investigation.

Art. 18 – Subsequent measures

Unless it decides to provide for a supplementary investigation, the competent Dicastery proceeds in accordance with the law provided for the specific case.

Art. 19 – Compliance with state laws

These norms apply without prejudice to the rights and obligations established in each place by state laws, particularly those concerning any reporting obligations to the competent civil authorities.

The present norms are approved *ad experimentum* for three years.

I establish that the present Apostolic Letter in the form of *Motu Proprio* be promulgated by means of publication in the *Osservatore Romano*, entering into force on 1 June 2019, and then published in the *Acta Apostolicae Sedis*.

Given in Rome, at Saint Peter's, on 7 May 2019, the seventh year of my Pontificate.

FRANCIS

Cf. http://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html

BOOK REVIEW

Koonampampil, Joseph, *Religious Life Today: Challenges and Prospectives* (Dharmaram Canonical Studies 24), Bengaluru: Dharmaram Publications (2019) pp. 98, price: Rs. 250/ \$ 05.00

This book in 5 chapters is an attempt to explore the origin and growth of the juridical institution of Major Archbishop from a historical and canonical context in the light of the provisions of the Code of Canons of the Eastern Churches (CCEO) promulgated in 1990. In his work the author demonstrates that although the terms 'major archbishop' and 'major archiepiscopal Church' are used for the first time in CCEO, the institution as such is ancient and its roots could be traced back to the decrees of the early ecumenical councils and canonical collections. The head of a Catholic Church *sui iuris*, with super-metropolitan/quasi patriarchal powers as per the study was known under different titles such as Metropolitan, Archbishop, Exarch, Primate, *Catholicos* and *Maphrian*. The elevation of the Syro-Malabar Church, to which the author belongs, to major archiepiscopal status, shortly after the promulgation of CCEO seems to have inspired the author to do his research under this theme.

In the first chapter of this scientific and systematic work, the author makes a study on the historical development of various super episcopal structures and titles like metropolitan, Archbishop, Exarch, primate, *Catholicos*, *Maphrian* and Patriarch. He begins with an analysis on the hierarchical structuring in the early Church based on references from the New Testament and the writings of Apostolic Fathers. Then by making an in-depth study of the sacred canons he describes in detail how these institutions which naturally and organically evolved in the course of time got official sanction through the enactments of the early councils. As the result of his research he presents the following six major factors which played a key role in the emergence of these structures: i) synodal form of Church governance under the presidency of metropolitan at the provincial level and at a broader administrative level under the presidency of bishops of preeminent sees who enjoyed super metropolitan powers; ii) principle of accommodation where in the importance of a bishopric and its bishop were decided on the basis of the civil importance of the city; iii) the Churches of apostolic origin situated in the capital city with its well

organized structure could exert a lot of authority on the surrounding bishops on the basis of authentic continuity of apostolic tradition; iv) the missionary method the apostles employed in preaching the gospel, first in the central cities of the empire, played a crucial role in these cities assuming a greater role later. This was because Christianity spread to other places from these cities and when eparchies were established in these places they came under the leadership of the bishop of the city; v) the help the highly powerful bishops of the cities extended to the neighbouring bishops during persecutions also led to these bishops obtaining a power of them; vi) apart from these five reasons some bishops because of their exceptional virtues and personal abilities were able to command the respect of other bishops.

In the second chapter the author makes a critical analysis of the institution of archbishop contained in the canons of *Cleri sanctitati* (CS) and explains how the figure of the archbishop mentioned in the *motu proprio* prefigures the major archbishop of CCEO. An elaborate study of the notion of the juridical figure of the Major Archbishop contained in this first oriental legislation is a valuable tool for anyone who wants to have an idea about the erection of major archiepiscopate, the election of the major archbishop by the synod of bishops of the major archiepiscopate, the super metropolitan and super-episcopal powers he enjoys, the territorial limitation of his power and the organs and persons which help him in the exercise of his power.

Having given a background in the first and second chapters the author enters into the central theme of his work, namely the juridical institution of major archbishop which is clearly described in Title V of CCEO under the heading major archiepiscopal Churches. Since the ecclesiological vision of Second Vatican Council and the resultant ten guiding principles played a crucial role in the redaction of all canons of CCEO the author makes a detailed study of the teaching of that council and explains how article 10 of *Orientalium Ecclesiarum* which contains the Council's enactment on the institution of major archbishop was evolved. After having described the redaction process of the CCEO cc. 151-154 on major archiepiscopal Churches, the author gives us a clear picture of the election process of a major archbishop and the exercise of his authority over his Church *sui iuris*. Since as per CCEO c. 152 "what is stated in common law concerning patriarchal Churches or patriarchs is understood to be applicable to major archiepiscopal Churches or major archbishops, unless the common law expressly provides otherwise or it is evident from the nature of the matter," a study of the canons on the patriarchal Churches is made to

understand the juridical figure of the major archbishop. Likewise the precedence of honour given to the patriarch and the differences and similarities and the election process of a patriarch and that of the major archbishop are explained. The author at the end of the chapter reasonably concludes that CCEO provides for the growth of a major archiepiscopal Church under its *pater et caput*, the major archbishop, in accordance with its own heritage, identity and traditions under the guidance of the Roman Pontiff.

The fourth chapter which makes comparative study of the juridical nature of the Ukrainian Major Archbishop and the various Orthodox autocephalous and autonomous archbishops, helps us to understand the differences in the exercise of the power and the extent of autonomy enjoyed by these two archbishops. Though both the institutions are based on the sacred canons there are differences between them because of the different circumstances in which they developed. The author observes that Catholic major archiepiscopal Churches cannot be called autocephalous in the orthodox sense of the term. While the lack of a supreme authority in the orthodox communion who can say the final word in individual cases creates a great confusion in these Churches, the catholic major archiepiscopal Churches under the supreme authority of the Roman Pontiff finds it easy to guarantee the unity and order within the Church. According to the author a brief historical analysis of the juridical status of the Catholic Ukrainian Major archiepiscopal Church and its Major Archbishop and a study on the juridical sources of Ukrainian Church are important in so far as they form part of the *fontes* of the institution of major archbishop.

Being a proud son of the Syro-Malabar Church the author seems to feel that any study on the juridical institution of the major archbishop would be incomplete if it does not give sufficient attention to the juridical implications of the elevation of the Syro-Malabar Church to major archiepiscopal status. This is precisely what we find in the fifth and final chapter of this scholarly research work. To make the study authentic and meaningful the author examines the juridical status of the Syro-Malabar Church in the various phases of its history and analyses the provisions of the major archiepiscopal structure of the Syro-Malabar Church made on the basis of the related Pontifical and Curial documents of the acts of the Syro-Malabar Bishops' Synod held until 1997. One main point he stressed while speaking of the future prospects of this Church was all-India jurisdiction. His argument in favour of it was "Although it is true that supra-metropolitan power was exercised within a definite territory even in ancient times, the

modern phenomenon of mass migrations and the necessity of observance of one's proper rite (CCEO cc. 39-41) demand a reconsideration of the issue." He also strongly argues that the apostolic foundation and the flourishing growth of the Syro-Malabar Church call for patriarchal status to this Church.

In short, it can be said that this scholarly work sheds enough light on the juridical institution of a catholic major archbishop by analysing it from various historical and juridical angles.

Benny Tharakunnel, CMI

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