

THE RIGHT OF DEFENCE IN THE ADMINISTRATIVE PROCESS OF THE REMOVAL OF A PARISH PRIEST

Part I: Canonical Causes and Procedures

Johnson Kovoorthenpurayil*

The first part of this article deals with canonical causes and procedures for the administrative removal of parish priests. It explains harmful or ineffective ministry as the reason for removing a parish priest, leaving room for adding any grave reasons, and the five specific reasons for removal. Beginning with the preliminary investigation, this article illustrates the procedures for removing parish priests and the relevant general norms for issuing an administrative decree.

1. Introduction

The parish priest is “a presbyter to whom the care of souls in a given parish is committed as to its own shepherd.” He is “the foremost collaborator of the eparchial bishop in the parish under the authority of the same eparchial bishop” (CCEO c. 281; CIC c. 519). Therefore, any grave harm caused by a parish priest affects the care of souls in the parish, indirectly affecting the pastoral function of the bishop. Hence, taking into account the care of souls (*cura animarum*), whenever the ministry of a parish priest becomes harmful (*noxium*) or ineffective (*inefficax*) in a parish, even without any serious fault on his part, the Church has provisions for removing him (CCEO cc. 1389-1396; CIC cc. 1740-1747). The bishop should follow strict procedures for removal and observe provisions for the right of defense of the parish priest at

*Fr. Johnson Kovoorthenpurayil, ordained priest on December 30, 1998 for the Archdiocese of Tellicherry, served as parish priest in different parishes from 1999 to 2005 before pursuing higher studies. After completing his licentiate in Oriental Canon Law at DVK, Bangalore in 2008, he was first appointed Adjutant Judicial Vicar (May - October 2008). In November of the same year, Fr. Johnson was named Judicial Vicar of the Metropolitan Tribunal of the Archdiocese of Tellicherry. After magnificent service as Judicial Vicar, in 2012 he joined the Pontifical Oriental Institute in Rome to pursue his doctoral research, which he completed in 2016. He has been again newly appointed as the judicial vicar of the eparchy and will take up the office in September 2016.

each stage of this procedure. Unfortunately, since the present procedures for removal and for resolution of recourse against a decree of removal are administrative, provisions for the right of defense in these cases are weak and limited.

The motives behind this article, *The Right of Defense in the Administrative Removal of Parish Priests* are: (1) to specify the right of defense in the administrative procedure for the removal of parish priests and thereby equip such priests with due awareness of their rights and; (2) to clarify the correct procedural norms in the administrative removal of parish priests stipulated in CCEO cc. 1389-1396 and CIC cc. 1740-1747. Such clarification is necessary because 'there emerge several recourses against the decree of removal before the *Signatura* and most of such recourses concern violation of procedural law.'¹ Hence, priests subject to administrative removal are often denied the full right to defend themselves.

The theme dealt here is relevant and important for a number of reasons. First, the removal of parish priests is a delicate issue and "the relatively large number of cases involving the removal of pastors decided by the *Signatura Apostolica* in recent years is indicative of the frequency of the problem faced by many dioceses around the world."²

Secondly, the issue of the 'right of defense in the administrative removal of parish priests' is more relevant today than it was in the past. The increased number of recourses against decrees removing parish priests lodged before the Congregation for the Clergy over the last 10 years confirms this. Between 2006 to 2015, this congregation received 29 recourses against decrees of removal from the office of parish priest. Of these, 12 cases belong to the five-year period of 2006-2010 and 17 cases to the five-year period of 2011-2015.³

Thirdly, this study intends to analyze critically the possible danger that the present canons on administrative removal will lead to

¹Kurt Martens, "Protection of Rights: Experience with Hierarchical Recourse and Possibilities for the future," *The Jurist* 69 (2009) 680-681.

²Augustine Mendonça, "Canons 1742, §1 and 1745, 2° - Consultation with Two Pastors in the Removal of a Pastor," in *Roman Replies and CLSA Advisory Opinions 2006*, eds. Stephen Pedone and Paul D. Counce (North Payne Street, Suite C: Canon Law Society of America, 2006) 99.

³Cf. Archive, *Congregation for the Clergy*, Città del Vaticano. See the table of statistics given in the second part of this article while dealing with the recourse against the decree of removal.

individual priests being deprived of their rights. Such a denial would directly contradict the principle enunciated in the preparatory discussion for the revision of the 1917 Code of Canon Law (PCCICR) that "the guarding of human rights cannot be left to the discretion in the administrative field."⁴

Finally, this topic has added relevance in light of two recent papal actions. The first is the recent amendments to the procedures for adjudicating the nullity of marriages,⁵ through which Pope Francis intended to avoid unnecessary delay in achieving justice. The second is the new *motu proprio Come Una Madre Amorevole*, through which the supreme legislator has issued norms for removing bishops from office in specific cases. In particular, the *motu proprio* provides for the removal of bishops who through negligence committed or through omission facilitated acts that have gravely harmed individuals or the community as a whole, and who objectively and gravely lack the diligence their pastoral office demands of them, even without serious moral fault on their part (Art. 1 §§1 and 2).⁶

To remove someone from an office conferred for an indeterminate time, the competent ecclesiastical authority needs a *grave cause* and *strict observance of the procedures*. The same is valid for the removal of a person from an ecclesiastical office conferred for a determined time, if it concerns a removal before this time has elapsed (CCEO c. 975 §1; CIC c. 193 §§1 and 2). Since the parish priest has stability in his office, either for an indeterminate time or for a definite period of time stipulated by particular law (CCEO c. 284 §3; CIC c. 522), removal before his term of office expires requires *grave reasons* and that a bishop follow the *exact procedures* determined by law.

⁴"... la tutela dei diritti dell'uomo non può essere lasciata alla discrezionalità nell'ambito amministrativo." *Communicationes* 14 (1982) 87; English trans. William Richardson, "An Appalling Vista? The Future of Judicial Penal Trials in the Latin Code," *Studia Canonica* 46 (2012) 343.

⁵Motu Proprio *Mitis et Misericors Iesus* has substituted CCEO cc. 1357-1377 and Motu Proprio *Mitis Iudex Dominus* substituted CIC cc. 1671-1691 with new canons on procedures for declaring nullity of marriage. Cf. Pope Francis, Motu Proprio: *Mitis Iudex Dominus Iesus e Mitis et Misericors Iesus*, August 15, 2015 (Città del Vaticano: Libreria Editrice Vaticana, 2015) 5-68.

⁶Pope Francis, Motu Proprio *Come Una Madre Amorevole*, June 4, 2016, Città del Vaticano, https://w2.vatican.va/content/francesco/it/motu_proprio.index.html, accessed on 23/07/2016.

To better explain the subject, this article is divided into two: part I on the reasons and procedures for the removal of parish priest, and part II on recourse against the decree of removal. The second part also analyses the canonical provisions for associated right of defense and makes suggestions for revision.

CCEO c. 1389 stipulates: “When the ministry of any pastor becomes harmful or at least ineffective for any reason, even through no grave personal negligence, the eparchial bishop can remove him from the parish.”⁷ CIC canon 1740 resembles this canon.

This canon identifies the eparchial bishop [diocesan bishop in CIC] as the sole authority competent to remove a parish priest whose ministry becomes “harmful or at least ineffective.” Since an eparchial bishop is “the one to whom the eparchy has been entrusted to shepherd in his own name” (CCEO c. 178; CIC cc. 376, 381 §1), he has to take preventive measures when a parish priest’s ministry becomes harmful or ineffective.

1. Reasons for the Removal of Parish Priests

In commenting on canon 1740 of CIC (CCEO c. 1389), *Exegetical Commentary* states:

The reasons for which a pastor can be legitimately removed from office in accordance with c. 1740 must be of such a matter that they transform his ministry into something harmful or at least ineffectual. Canon 193 (CIC)... demands “serious reasons” for the removal if the office was conferred for either a definite or indefinite time (§1), when one tries to remove title holders before his prearranged term of office has ended (§2).⁸

⁷For the translations of CCEO, the new Latin-English edition of the *Code of Canons of the Eastern Churches* prepared under the auspices of the Canon Law Society of America, reprinted and published by TPI, Bangalore, 2003 is used throughout this work. Whereas, for the translations of CIC, the new revised English translation of *The Code of Canon Law* prepared by the Canon Law Society of Great Britain and Ireland in association with the Canon Law Society of Australia and New Zealand and the Canadian Canon Law Society, reprinted and published by TPI, Bangalore, 2004 is used.

⁸Ángel Marzoa, “The Procedure for the Removal of Parish Priests,” in *Exegetical Commentary on the Code of Canon Law IV/2*, eds. Ángel Marzoa, Jorge Miras, and Rafael Rodríguez- Ocaña (Montreal, Canada: Wilson & Lafleur, 2004) 2111.

This notion has been very prevalent in the canons of the Church Fathers, the Apostolic Canons, canons from the early synods, and the canons of the ecumenical councils. According to canon 9 of Theophilus of Alexandria (+412), a cleric could be removed only if a trustworthy accuser presented an accusation against a cleric and proved it.⁹

The reasons for removal in the codes of canon law can be grouped in two: *non-specific causes* (CCEO c. 1389; CIC c. 1740), which leave room for adding further reasons affecting care of the souls, and the *specific causes* enumerated in the Codes of Canon law (CCEO c. 1390; CIC c. 1741).

1.1. Non-Specific Reasons

The main reasons for the removal of a parish priest stipulated in CCEO cc. 1389 (CIC cc. 1740) without specification are those of pastoral nature, i.e., "harmful" (*noxium*) or "ineffective" (*inefficax*) ministry.¹⁰ To remove an irremovable parish priest from his office, CIC 1917 also indicated the same as a principal cause (c. 2147 §1).¹¹ *Ecclesiae Sanctae*, 20 §1 also used the terminologies "*noxium*" and "*inefficax*" among causes justifying the removal of parish priests.¹² '*Noxium*' is an old term inserted among the reasons for removal that we find under c. 1, 1° of *Maxima Cura*,¹³ the first universal legislation regulating the administrative removal of parish priests.

How can the ministry be harmful? While dealing with "the problem clergy" in one of the issues of *CLSA Proceedings*, the authors point out certain instances where parish priests can be 'disruptive.' Offences potentially committed by a disruptive priest include: "apostasy, heresy or schism (CIC c. 1364); the use of the media of social communication to disturb ecclesial communion (CIC c. 1369); stirring up hatred against

⁹Dimitrios Salachas, "The Sacred Canons on the Administration of Justice Received or Adapted in the Eastern Code," English trans. Paul Pallath, *Eastern Legal Thought* 2 (2003) 15-16.

¹⁰CCEO c. 1389 (CIC c. 1740): "Si alicuius parochi ministerium aliqua de causa, etiam citra gravem ipsius culpam, noxium aut saltem inefficax evasit, parochus ab Episcopo eparchiali a paroecia amoveri potest." AAS 82 (1990) 1325.

¹¹AAS 9 pars II (1917) 404.

¹²Paul VI, *Motu Proprio Ecclesiae Sanctae*, August 6, 1966, AAS 58 (1966) 768.

¹³Pius X, *Decretum Maxima Cura*, August 20, 1910, AAS 2 (1910) 637.

Church authority (*CIC* c. 1373); and abuse of ecclesiastical power or function or harmful negligence in office (*CIC* c. 1389)."¹⁴

How can a ministry be ineffective? There are not only juridical relationships between a cleric and his bishop or his superior, but also a personal relationship between the cleric and the entire people of God, especially the Christian community that he has to serve. This community has the right to enjoy effective ministry from its priests. Pope John Paul II explicitly addresses this reality in *Pastores Dabo Vobis* no. 70, with reference to ongoing formation intended to ensure a priest's faithfulness to his own ministry, to his very being based on love for Jesus Christ, and to oneself. It is also an act of love for the People of God at whose service the priest is placed. Indeed, pastoral ministry is an act of true and proper justice (*verae et propriae iustitiae*).¹⁵ Whenever a priest defects from it, his ministry becomes ineffective (*inefficax*).

During the drafting of *CIC*, many objected to 'ineffective (*inefficax*)' as too broad a term that would subject parish priests to arbitrary removal by bishops and therefore they argued that it must be suppressed. The drafters of the code rejected this objection and held 'ineffective ministry' as a real problem. They proposed that arbitrariness could be corrected through juridic provisions, foreseen in the law to protect natural and canonical equity.¹⁶

Any serious reason not precisely listed in *CCEO* c. 1390 (*CIC* c. 1741) also can become a cause once it makes pastoral ministry harmful or at least ineffective.¹⁷ Since "the Christian faithful have the right to receive from the pastors of the Church, assistance out of the spiritual goods of the Church, especially from the Word of God and from the sacraments" (*CCEO* c. 16; *CIC* c. 213), grave failure in pastoral

¹⁴Richard Irons, and Kevin M. McDonough, "Problem Clergy Other than Misconduct Cases: Profiles and Canonical Possibilities," *CLSA Proceedings* 56 (1994) 125.

¹⁵John Paul II, *Pastores dabo vobis*, March 25, 1992, *AAS* 84 (1992) 781; *Origins* 21/45 (April 16, 1992) 751.

¹⁶PCCICR, "Acta Commissionis: Coetus Studiorum de Processibus: Sessio VII," *Communicationes* XI (1979) 286-87.

¹⁷Zenon Grocholewski, "Certain Special Processes (cc. 1357-1400)," in *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches (Kanonika 10)*, ed. George Nedungatt (Rome: Pontificio Istituto Orientale, 2002) 783.

functions, namely *failure in duties, failure in negative obligations, and disregard for functions and faculties*, can be cause for removal under "harmful" (*noxium*) or "ineffective" (*inefficax*) ministry.¹⁸

1.1.1. Failure in Principal Duties

The canons regarding the office of the parish priests mention certain duties of parish priests (CCEO cc. 289-296; CIC cc. 528-537), the first of which is: '*tria munera: docendi, sanctificanti et regendi.*' There are other duties like keeping accounts of finance, obligation of residence, leading an exemplary life and celebration of Divine Liturgy, etc.¹⁹

1.1.1.1. Teaching

The teaching office (*munerum docendi*) is of prime importance among the duties of a parish priest. In carrying out the teaching function, the parish priest is first of all bound to preach the Word of God. Through this obligation, a parish priest leads the Christian faithful into faith, hope and charity. The parish community becomes an example of witness to the command of love through the effort of a parish priest's function as teacher (CCEO c. 289 §1; CIC c. 528 §1). Therefore, "the pastor has a special responsibility for the Catholic education of the children and young people in his parish."²⁰

CIC canon 762 highlights that "sacred ministers are to consider the office of preaching as of great importance, since proclaiming the Gospel of God to all is among their principal duties." Accordingly, "the function of teaching is carried out especially by efficient preaching and catechesis, for which the pastor is encouraged to seek

¹⁸A definitive sentence by Apostolic Signatura dated June 28, 2003 confirmed the removal of a parish priest since he failed to establish pastoral council in his parish according to the 'diocesan pastoral plan' even after several warning. Cf. *Coram Cacciavillan*, June 28, 2003, Prot. no. 29531/98 CA, in *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura, Official Latin with English Translation*, ed. William L. Daniel (Montréal: Wilson & Lafleur, Ltée, 2011) 389-413; *Studies in Church Law 2* (2006) 275-296.

¹⁹Marco Brogi, "Eparchies and Bishops (cc. 177-310)," in *A Guide to the Eastern Code*, 244.

²⁰Edward G. Pfnausch, ed., *Code, Community, Ministry: Selected Studies for the Parish Minister Introducing the Code of Canon Law* (Washington DC: Canon Law Society of America, 2004) 88.

the assistance of the religious of both sexes and of the laity.”²¹ As it is observed, “according to the code, pastors have a grave duty (*officium gravum*) to observe the catechetical formation of adults and minors in their care. ...Put in practical terms, the oversight of the catechesis of infants or adults, in or out of schools, belong to the pastor as representative of the bishop.”²² The duty to catechize the people is related to the office of teaching, and parish priests have a grave obligation (*gravis obligatio*) to fulfill their faithful’s need for catechetical formation (CCEO c. 624; CIC c. 776).

1.1.1.2. Sanctifying

The second among the *tria munera* is the sanctifying function (*munerum sanctificandi*). A parish priest is to ensure that the Christian community in his parish is nourished with the spiritual food through frequent reception of sacraments (CCEO c. 289 §2; CIC c. 528 §2). The celebration of Divine Liturgy is the centre of this function, and “the lack of the Eucharist is a grave impoverishment which can gradually deform the community, that is to say, the community can be transformed into one that is no longer eucharistically centered.”²³

What is the sanctifying role of a parish priest to Christian faithful outside of his proper parish? It is indicated that “even if there is no juridical relationship and no strictly legal right involved, a parish priest may have a greater moral obligation to provide appropriate spiritual assistance to those whom he has welcomed to a greater degree into his parish community, even though they be proper parishioners elsewhere.”²⁴

1.1.1.3. Governing

The governing office (*munerum regendi*) is the third among the *tria munera*. To govern the faithful, the parish priest should know the

²¹Victor J. Pospishil, *Eastern Catholic Church Law*, Revised Edition (New York: Saint Maron Publications, 1996) 255.

²²Richard. J. Barrett, “The Right to Integral Catechesis as a Fundamental Right of the Christian Faithful,” *Apollinaris* 67/3-4 (1994) 190. See also Richard. J. Barrett, “The Normative Status of the Catechism,” *Periodica De Re Canonica* 85 (1996) 16.

²³James A. Coriden, “The Rights of Parishes,” *Studia Canonica* 28/2 (1994) 301.

²⁴James J. Conn, “Parishes-of-Choice: Canonical Theological and Pastoral Considerations,” *Periodica De Re Canonica* 92/3 (2003) 289.

people personally and foster his parishioners' Christian life both as individuals and as members of the entire parish community. He should see to the needs of people of different age groups. He is to love the poor and show special care for the workers and thereby ensure that the Christian faithful offer assistance in the works of the apostolate (CCEO c. 289 §3; CIC c. 529).

Since the above mentioned principal duties belong to the *tria munera*, any grave failure in those on the part of a parish priest is a serious reason to remove him.

1.1.1.4. Other Different Duties

The pastor is bound by several other duties. Collaborating with his own hierarch (CCEO c. 281 §1; CIC c. 519; CD 28), ministering to the Christian faithful of other *Churches sui iuris* entrusted to him, residing in the rectory near the parish, keeping records, celebrating the Divine Liturgy for the people, fostering vocations, preparing parents for the celebration of their infant's baptism, preparing the Christian faithful for marriage and instructing Christian faithful to receive the Divine Eucharist etc., are certain other duties entrusted to a pastor (CCEO cc. 290-298, 686 §2, 695 §1; CIC cc. 530-539, 867 §1, 890-891). In a parish, there are to be appropriate councils dealing with pastoral matters and financial matters (CCEO c. 295). CIC c. 536 §1 demands the establishment of a pastoral council in each parish.

The duties of a parish priest can better be understood in relation with the rights of Christian faithful. Thomas J. Green rightly evaluates: "often in the two codes, rights and duties are articulated in an interdependent fashion. For example, the duties of bishops and pastors can largely be understood only in relationship to the corresponding rights of the faithful."²⁵ Therefore, in general, failure of a parish priest in the pursuit of the fulfillment of the rights of Christian faithful entrusted to his pastoral care can be assessed as failure in duties leading to removal under 'harmful' or 'ineffective ministry' (CCEO c. 1389; CIC c. 1740).

²⁵Thomas J. Green, "The parish: Theological and Canonical parameters," *The Jurist* 69 (2009) 216.

1.1.2. Failure in Negative Obligations

Since a pastor is a presbyter (CCEO c. 281 §1; CIC c. 521 §1) and distinguished from other Christian faithful (CCEO cc. 323 §2 and 325; CIC c. 207 §1), he is bound by the obligations of clerics, many of which are negative in character. The following are some among these:

1.1.2.1. Abstain from Unbecoming Occupations

As per norms, “clerics are to abstain completely from all those things unbecoming to their state, in accordance with the norms defined in detail by particular law and also are to avoid those things that are alien to it” (CCEO c. 382; CIC c. 285 §§1-2). Particular law of the Syro-Malabar Church states: “clerics shall abstain from everything unbecoming to the clerical state and Christian witnessing.”²⁶

1.1.2.2. Avoid Controversies

Clerics are obliged to avoid controversies and, if they occur, they should be drawn to ecclesiastical courts (CCEO c. 389). Most of the particular laws forbid a cleric to sue anybody for any reason in civil forum without the prior consent of the bishop.²⁷

1.1.2.3. Abstain from Trade or Business

According to the codes of canon law, clerics are forbidden to exercise any commerce or trade except with the permission of the authority defined by the particular law of their own Church *sui iuris* or by the Apostolic See” (CCEO c. 385 §2; CIC c. 286). The authority defined by the particular law of the Syro-Malabar Church *sui iuris* in this regard is the eparchial bishop or major superior as the case may be.²⁸

1.1.3. Disregard for Functions and Faculties

CIC c. 530 and different canons in the CCEO prescribe certain functions particularly entrusted to parish priests. Disregard for these can lead to removal from their office.

²⁶Synod of Bishops, *Code of Particular Law of the Syro-Malabar Church*, art. 50. See c. 58 of the *Particular Law of the Ukrainian Greek Catholic Church* in this regard, stating the same norm.

²⁷Victor J. Pospishil, *Eastern Catholic Church Law*, 288.

²⁸Synod of Bishops, *Code of Particular Laws of the Syro-Malabar Church*, art. 52.

According to the codes of canon law, celebrating the sacraments of Christian initiation, blessing marriages, anointing the sick, performing ecclesiastical funeral rites, etc. belong to the parish priest (CCEO cc. 290 §2, 783 §1, 677 §1, 739 §2; CIC c. 530). Celebrating Divine Liturgy and administering the sacrament of penance are of the most important functions of a pastor (CCEO c. 289 §2; CIC c. 528 §2). Further, pastors of the soul are to see to it that the sick find relief in receiving anointing of the sick at an opportune time (CCEO c. 738; CIC c. 530).

Together with sacraments, the Church also provides sacramentals for the spiritual growth of the faithful. These are sacred signs with spiritual effects that dispose their recipients to receive the principal effect of the sacrament (CCEO c. 867; CIC cc. 1166-1167). Pastors are endowed with the faculty to perform certain functions like celebration of funerals, blessing of the houses, blessing of palms etc., according to the particular law or legitimate custom.²⁹ Failure in administering sacraments and sacramentals for the faithful renders the pastoral ministry harmful and/or ineffective.

In addition, parish priests are endowed with certain faculties. For example, they are the ordinary ministers of a valid marriage (CCEO cc. 828 §1, 829 §1; CIC cc. 1108-1109). In *omnia parata* situations, if an occult impediment for marriage is discovered, a pastor is competent to dispense from all impediments except from the impediment of sacred orders and of a public perpetual vow of chastity (CCEO c. 797 §1; CIC c. 1080). A parish priest can dispense from private vows (CCEO c. 893 §1, 1° and 2°; CIC c. 1196, 1°). Any serious failure in the exercise of the above said faculties can be a solid reason under non-specified causes to remove a parish priest.

To conclude, we can rightly say that the non-specified causes include any grave failure in the pastoral duties of a parish priest. This position is confirmed by the Apostolic *Signatura*. In a 2003 definitive sentence resolving recourse against the removal of a parish priest, the *Signatura* observes:

According to the norm of c. 1740, "when the ministry of a parish priest becomes harmful or at least ineffective for some cause, even without serious fault on his part, he can be removed from the parish by the diocesan bishop." Five such causes are given in c. 1741, but it is peacefully accepted that any cause whatsoever according to which one's ministry becomes harmful or at least

²⁹Victor J. Pospishil, *Eastern Catholic Church Law*, 256-257.

ineffective is sufficient. Nevertheless, according to doctrine and jurisprudence of this Supreme Tribunal, such a cause must be grave and prolonged, even if it pertains to only some aspect of ministry, but one of great importance.³⁰

1.2. Specific Reasons for the Removal

CCEO c. 1390 (CIC c. 1741) stipulates certain specific reasons to remove a parish priest.

1.2.1. Grave Detriment or Disturbance to the Ecclesiastical Communion

The first specific cause due to which a parish priest can be removed from his parish as per CCEO c. 1390, 1^o (CIC c. 1741, 1^o) is “a manner of acting that brings grave detriment or disturbance to ecclesiastical communion.”³¹ While enumerating reasons for removing pastors, neither *Maxima cura* nor CIC 1917³² mention it among the particular reasons to remove a parish priest, since the highlighted communion aspect of the Church and parish resulted from Vatican Council II.³³

The notion of communion, a term derived from the Greek word *koinonia*, indicates “theological assertion about God’s loving kindness shared by those who have been called to Christ in faith.”³⁴ The Church is a communion of communities of believers because “believers, who

³⁰Cacciavillan, *Coram*, June 28, 2003, Prot. no. 29531/98 CA, in *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, 399.

³¹CCEO c. 1390, 1^o: “modus agendi, qui communioni ecclesiasticae grave detrimentum vel perturbationem affert...” AAS 82 (1990) 1325.

³²*Decretum Maxima Cura* c. 1, AAS 2 (1910) 637-638; CIC 1917 c. 2147 § 2, AAS 9 pars II (1917) 404. This reason is also absent in the *initial text* published by the PCCICOR in *Nuntia* 8 (1979) 95-96. It first appears in the schema-1982 published in *Nuntia* 14 (1982) 90-92.

³³*Lumen Gentium* no. 1 envisages the Church as a sacrament; a sign and instrument of *communio* with God and of unity among all people. The faithful throughout the world are in *communio* with one another in the Holy Spirit (LG 13). Following this approach of Vatican Council II, “*communio*” is used in two legal contexts in the Code of Canon Law: (i) to refer to the Church and (ii) to refer to the Eucharist.³³ Even the terminology for marital union is replaced by “*consortium*,” not *communio* (CCEO c. 776 §1; CIC c. 1055 §1). For a detailed study on it, see John A. Renken, “The Parish: Community of the Christian Faithful within the Particular Church,” *CLSA Proceedings* 60 (1998) 179-223.

³⁴James A. Coriden, “The Rights of Parishes,” *Studia Canonica* 28/2 (1994) 296.

respond to God's word and become members of Christ's body, become immediately united with him."³⁵

A parish is "community of the Christian faithful" (CIC c. 515 §1; CCEO c. 279) and therefore the parish priest is to foster communion in such a community. Any disturbance from a parish priest affecting the communion aspect will destroy the expected actualization of his *tria munera*: teaching, sanctifying and ruling. When a priest is not united to Christ and to His visible body through the bond of *communio fidei*, he cannot fulfill the *munus docendi* (CCEO c. 289 §1; CIC c. 528 §1; PO 30). In the same way, the *munus sanctificanti* (CCEO cc. 288-290, 677 §1, 739 §2; CIC cc. 527-530) is effectively administered only through the bond of *communio sacramentorum*. Thirdly, *Munus Regenti* is carried out in the care of souls (PO 30) through the bond of *communio regiminis*.³⁶ Hence, 'grave detriment or disturbance to ecclesiastical communion' is a serious offence and a solid reason for the removal of a parish priest because:

The pastor promises to preserve *communio* and to assist diocesan bishops so that apostolic activity is carried out in *communio* with the Church. Indeed, the first reason identified as justifying the removal of a pastor is his acting in a way which is gravely detrimental or disturbing to the ecclesial *communio* (c. 1741 1^o).³⁷

1.2.2. Ineptitude or Permanent Infirmary of Mind or Body

Both codes consider "ineptitude or a permanent infirmity of mind or body that renders the pastor unable to fulfill his functions usefully" as reasons to remove a parish priest (CCEO c. 1390, 2^o; CIC c. 1741, 2^o).³⁸ These reasons already existed in canon 2147 §2, 1^o of CIC 1917,³⁹ which denotes several dimensions of incompetence. Deficiency in good

³⁵CCC 790.

³⁶Ángel Marzoa, "The Procedure for the Removal of Parish Priests," 2113.

³⁷John A. Renken, "The Parish: Community of the Christian Faithful within the Particular Church," *CLSA Proceedings* 60 (1998) 180.

³⁸CCEO 1390, "2^o imperitia aut permanens mentis vel corporis infirmitas, quae parochum suis muneribus utiliter obeundis imparem reddunt;" AAS 82 (1990) 1325. See also AAS 75 pars II (1983) 299 for the Latin origin in the CIC 1983.

³⁹CIC 1917 c. 2147 §2, 1^o: "Imperitia vel permanens infirmitas mentis aut corporis, quae parochum suis muneribus rite obeundis imparem reddit, si iudicio Ordinarii..." AAS 9 pars II (1917) 404; English Trans. Edward N. Peters, *The 1917 or Pio-Benedictine Code of Canon Law*, 683.

judgment and lack of experience are other aspects of it. Hence, “inexpertness” is the incompetence in different realms that prevent a parish priest from providing proper pastoral care.⁴⁰

Already in the 18th century, ineptitude and ignorance (*imperitia et ignorantia*) were considered sufficient reasons to remove parish priests. Such is seen in a conferral decree from the Sacred Congregation of the Roman Curia concerning a rector removed from his benefice on account of ignorance of doctrine. In dealing with this particular case, the Sacred Congregation observed that a parish priest marked with *imperitia* is to be removed from the care of souls.⁴¹

i) Ineptitude

The decree *Maxima Cura* c. 1, 2^o, while enumerating the causes for the administrative removal of parish priests, expressed this generic cause with the words “*imperitia et ignorantia*.”⁴² In the strict sense, ignorance is the lack of knowledge that someone is obliged to possess and plays an important role in resulting *imperitia*. A certain extent of knowledge is necessary to fulfill ministry in any parish; however, some parishes demand more learned pastors than others. Hence, the expression ‘*ignorantia et imperitia*’ indicates the officer holder’s incompetence in relation to a given situation.⁴³ It is not a simple lack of experience, a defect that can be overcome, but something that disturbs the fulfillment of *cura animarum*. Thus, the term *imperitia* refers to the irremediably habitual un-skillfulness and lack of practical wisdom.⁴⁴

⁴⁰Maurice Connor, *The Administrative Removal of Pastors: An Historical Synopsis and Commentary, A Dissertation Submitted to the Faculty of Canon Law of the Catholic University of America in Partial Fulfillment of the Requirements for the Degree of Doctor of Canon Law* (Washington, DC: The Catholic University of America, 1937) 53-54.

⁴¹“In iure certissimum est, Parrochum imperitum esse removendum ab exercitio curae animarum, ut habetur ex cap. final., de aetat. et qualit.” *Sacra Congregatio Concilii*, “3798. Sedunen., 29 Iul., 19 aug., 1 sept. 1755,” in *Codicis Iuris Canonici Fontes VI*, ed. P. Gaspari (Romae: Typis Polyglottis Vaticanis, 1932) 94.

⁴²AAS 2 (1910) 637.

⁴³Maurice Connor, *The Administrative Removal of Pastors*, 53.

⁴⁴Ángel Marzoa, “The Procedure for the Removal of Parish Priests,” 2114 - 2115.

ii) Permanent Infirmary of Mind or Body

A parish priest may be removed for permanent mental infirmity, provided that the ordinary judges that the good of the parish cannot be carried on. There are different types and grades of insanity; thus, those disturbances are many and varied.⁴⁵ *Maxima Cura* canon 1, 1^o insisted on removing a parish priest who became incurably insane or who so lost his reputation and authority through temporary insanity.⁴⁶

In considering an appeal from the Congregation for the Clergy concerning the exercise of sacred orders, the Apostolic Signatura declared an accused cleric not to exercise (comment: did it declare him unable to exercise ministry or did it prohibit him from doing so?) sacred ministry as long as the psychic infirmity (here, sexually disordered behavior) continues. The Signatura observed: "psychic infirmity can lead to the inability to carry out the ministry 'properly,' whether with regard to the function of teaching or the functions of sanctifying or ruling."⁴⁷

Permanent infirmity of body prevents a parish priest from providing pastoral care. A transitory situation is not considered. According to a note given on this canon in the *Exegetical Commentary*, any physical or mental illness that objectively makes the beneficial fulfillment of the parish function impossible may be included under this reason.⁴⁸ Physical infirmities like blindness, deafness or anything else affecting pastoral care was considered a sufficient reason for removal in the *Maxima Cura* also.⁴⁹

While considering the question from the Secretariat of the State, based on certain bishops' petitions to the Holy See in 2012 for more procedural freedom in removing parish priests permanently infirm in

⁴⁵Mauris Connor, *The Administrative Removal of Pastors*, 55.

⁴⁶AAS 2 (1910) 637.

⁴⁷Supreme Tribunal of the Apostolic Signatura, "Concerning the Impediment to Exercise Sacred Orders, Prot. N. 23737/92 CA, Definitive Sentence, *Coram Davino*, May 4, 1996," trans. Rev. Salvatore Cordileone, *Forum* 7/2 (1996) 382.

⁴⁸Ángel Marzoa, "The Procedure for the Removal of Parish Priests," 2115.

⁴⁹Canon 1, 3^o: "Surditas, caecitas et alia quaelibet animae et corporis infirmitas, que necessariis curae animarum officii imparem in perpetuam vel etiam per diuturnum tempus sacerdotem reddant, nisi huic incommodo per coadiutorem vel vicarium occurri congrue possit." *Decretum Maxima Cura*, AAS 2 (1910) 637.

mind or body, Pontifical Council for the Interpretation of Legislative Text, in its reply dated September 25, 2014, by quoting *CIC* c. 1741, 2° and *CCEO* c. 1390, 2°, reaffirmed this reason as one of the specific causes for removing parish priests. The Pontifical Council, however, negated to declare any liberal procedure even if a parish priest is accused of this particular reason. Furthermore, recalling the present procedure, it demanded that the bishops first of all verify the existence of permanent infirmity in mind or body.⁵⁰

1.2.3. Loss of Good Reputation or Aversion to the Parish Priest

The third reason proposed by *CCEO* c. 1390, 3° and *CIC* c. 1741, 3° to remove a parish priest is: “loss of good reputation among upright and responsible parishioners or an aversion to the pastor that apparently will not cease in a brief time.”⁵¹ The loss of good reputation or aversion shall not be simply partial; but it should be a result of the assessments among the upright and responsible parishioners and the situation that apparently shall be likely to remain for a long time.⁵²

CIC 1917 c. 2147 §2, 3° enumerated certain reasons for the loss of good reputation such as: life-style of the parish priest, old crimes that have recently been detected, loss of a good reputation due to the behavior of family members and blood relatives with whom the pastor lives.⁵³ The rationale behind these causes for removal is the ‘good of the souls,’ not a reproof of the priest’s behavior. Therefore, “popular animosity, even though unjust and not universal, is also a sufficient cause for a pastor’s removal, provided that it is such as to hinder him from exercising a successful ministry and may be foreseen as not ceasing within a short time.”⁵⁴ The loss of good reputation must be in the eyes of honest and

⁵⁰Prot. N. 13903/2012, September 25, 2014, Archive, *Pontificio Consiglio per i Testi Legislativi*.

⁵¹*CCEO* c. 1390, 3°: “bonae existimationis amissio penes probos et graves paroecianos vel aversio in parochum, quae praevidentur non brevi cessaturae;” AAS 82 (1990) 1325.

⁵²Thomas J. Paprocki, “The Method of Proceeding in Administrative Recourse and in the Removal or Transfer of Pastors,” in *New Commentary on the Code of Canon Law*, eds. John P. Beal, James A. Coriden, and Thomas J. Green (New York: Paulist Press, 2000) 1839.

⁵³AAS 9 pars II (1917) 404; Edward N. Peters, *The 1917 or Pio-Benedictine Code of Canon Law: English Translation with Extensive Scholarly Apparatus* (San Francisco: Ignatius Press, 2001) 683.

⁵⁴Maurice Connor, *The Administrative Removal of Pastors*, 61.

upright parishioners, not people with ignoble interests. The bishop must evaluate to what extent loss of reputation or one's aversion to a pastor harms the profitable exercise of the priest's ministry in that parish.⁵⁵ This loss can be absolute or relative, subjective or objective. It must be foreseen that the situation will not stop soon.

1.2.4. Grave Neglect of Parochial Obligations even after Warning

Eastern and Latin canon law (CCEO c. 1390, 4^o; CIC c. 1741, 4^o) identify "grave neglect or violation of parochial obligations that persists after warning"⁵⁶ as a sufficient reason for removal. There are certain obligations and rights of clerics (CCEO cc. 367-393; CIC cc. 273-289). Here, the bishop must evaluate to what extent the neglect of parochial obligations has affected the correct and profitable carrying out of parish ministry intended for the good of the souls.⁵⁷

The *Signatura Apostolica*, in a decision dated June 28, 2003, gave a definitive sentence on the removal of a parish priest due to neglect. In the case, the priest failed to constitute a pastoral council in accordance with the 'diocesan pastoral plan' despite the repeated admonitions of the diocesan bishop. In confirming the decision of the bishop, the Supreme Tribunal declared: "The first and principal reason indicated in the decree of removal ("Lack of due pastoral ministry and concern in and for the parish"), according to the bishop, concerned...the parish priest's refusal to implement the diocesan plan for pastoral action, and this refusal, according to the opinion of the same Ordinary, rendered Rev. Britto's ministry inefficacious."⁵⁸

Maxima Cura, canon 1, 8^o specifically enumerated certain pastoral considerations like the administration of sacraments, teaching catechism, assisting the sick, explaining the Word of God etc. as sufficient reasons for removing a parish priest who neglected those duties even if after only one or another warning.⁵⁹ Hence, to specify this ground, we can articulate that the administration of sacraments,

⁵⁵Ángel Marzoa, "The Procedure for the Removal of Parish Priests," 2116.

⁵⁶CCEO c. 1390, 4^o: "gravis neglectus vel violatio obligationum parochi, quae post monitionem persistit;" AAS 82 (1990) 1326.

⁵⁷Ángel Marzoa, "The Procedure for the Removal of Parish Priests," 2117.

⁵⁸Supreme Tribunal of Apostolic Signatura, "Removal of a Parish Priest from Office, Decision *Coram* Cacciavillan, 28 June 2003," *Studies in Church Law* 2 (2006) 286.

⁵⁹AAS 2 (1910), 638.

pastoral duties, visiting the sick and the dying, teaching and preaching Christian doctrine fall within the grave pastoral obligations the neglect of which can lead to the removal of a parish priest from his office.⁶⁰

1.2.5. Poor Administration of Temporal Affairs

In the 1917 Code, “poor administration of temporal affairs along with grave damage to the church or benefice” was a reason for the removal of irremovable parish priests.⁶¹ The present codes of canon law (CCEO c. 1390, 5°; CIC c. 1741, 5°) maintain poor administration of temporal goods leading to damages of Church property as a sufficient reason to remove a parish priest.⁶²

To conclude our discussion on this section, we can articulate that the specific and non-specific reasons enumerated suffice for the bishop to remove a parish priest because:

Not only can new causes be established through particular law, but also in each specific situation the authority can determine if the cause is sufficiently grave to warrant removal from these offices. Generally, the causes will be one of those noted in the law, but the canon admits the possibility of other grave causes.⁶³

Hence, the non-specific causes provide ample discretion for a bishop to remove a parish priest whenever the ‘*cura animarum*’ is neglected in a parish. However, since the right of defense is a procedural right and the denial of it infringes the individual rights assured in the codes of canon law, a bishop should strictly follow the procedures established for removing a parish priest.

Once the eparchial bishop finds a grave reason causing harmful or ineffective ministry by a parish priest in his parish, the Church provides procedures for removing him (CCEO cc. 1391-1396; CIC cc. 1742-1747). Since the eparchial bishop has been entrusted with the governance of an eparchy, carried out in his own name and with

⁶⁰Carl Anthony Meier, *Penal Administrative Procedure against Negligent Pastors: An Historical Synopsis and Commentary* (Washington DC: Catholic University of America Press, 1941) 61-63.

⁶¹CIC 1917 c. 2147, 5°.

⁶²CCEO c. 1390, 5°: “mala rerum temporalium administratio cum gravi Ecclesiae damno, quoties huic malo aliud remedium afferri non potest.” AAS 82 (1990) 1326.

⁶³Pablo Gefaell, “Removal,” in *Exegetical Commentary on the Code of Canon Law* vol. I, eds. Ángel Marzoa, Jorge Miras and Rafael Rodríguez- Ocaña (Montreal, Canada: Wilson & Lafleur, 2004) 1065-1066.

proper, ordinary, and immediate power as the vicar and legate of Christ (CCEO c. 178), it becomes his duty to intervene where care of souls in a portion of his eparchy is in danger. Still, he must do so adhering to exact procedures.

2. Procedure for the Removal of Parish Priests

The Codes of Canon Law affirm that 'a parish priest ceases to hold office by resignation accepted by the eparchial bishop, expiration of a determined term, removal or transfer' (CCEO c. 297 §1; CIC c. 538 §1). CCEO cc. 1391-1396 and CIC cc. 1742-1747 provide exact procedures for removing parish priests. The procedure to remove a parish priest is the same in both codes, since the first plenary assembly of PCCICOR (March 18-23, 1974) decided to provide the same procedural norms for all Catholics.⁶⁴ Since the right of defense rests upon the strict observance of procedural law,⁶⁵ we turn now to the procedures for the removal of a parish priest.

2.1. Preliminary Investigation/Instruction

CCEO c. 1391 §1 (CIC c. 1742 §1) enumerates three different steps (preliminary investigation, discussion with two parochial assessors and invitation to resign) in the removal procedure:

If the instruction carried out establishes the existence of a cause for removal, the eparchial bishop is to discuss the matter with two pastors selected from the group of pastors, whom the presbyteral council elects for this purpose in a stable manner at the proposal of the eparchial bishop. However, if the bishop then judges that removal must take place, he paternally is to persuade the pastor to

⁶⁴"Si desidera che tutti i cattolici abbiano le stesse norme processuali." *Nuntia* 3 (1976) 9. In order to have a better understanding upon the uniformity of CCEO and CIC on procedural norms, see Job Abbas, *Two Codes in Comparison* (Rome: Pontificio Istituto Orientale, 1997) 209-216.

⁶⁵The Pontifical Council for the Interpretation of Legislative Text, while dealing with the question of reconsidering the procedure for the removal of parish priests by granting more freedom of action in handling cases of removing priests affected with permanent infirmity of mind or body, negated any exception to the existing procedure and, taking into account the protection of the rights of the parish priest and the stability of his office, insisted the bishops to observe all the procedures. Cf. Prot. N. 13903/2012, September 25, 2014, Archive, Pontificio Consiglio per i Testi Legislativi.

resign within fifteen days, after having explained, for validity, the cause and argument for the removal.

Though the code does not say much about the manner of conducting the preliminary investigation at this stage, the general norm on conducting preliminary investigations is to be followed (CCEO cc. 1468-1470; CIC cc. 1717-1719). In doing so, “the right of a person to be accused only after a thorough preliminary investigation both of the facts and circumstances and of imputability must be respected.”⁶⁶ While analyzing the preliminary investigation in the light of the rights of the defendant, a recent canonical article observes:

The preliminary investigation must be pursued according to a presumption of innocence with an accompanying intention to restore justice to the *investigatus* at the end of the procedure. If the preliminary investigation does not always proceed from this mindset, then it is guaranteed that the rights of the *investigatus* will be abused and permanently damaged whether they are innocent or guilty.⁶⁷

A bishop who receives credible allegations about a parish priest need not proceed immediately to a formal investigation. He may first attempt to resolve the problems through fraternal correction, or even counsel the priest to resign from office. The voluntary willingness of the pastor to resign can avoid the entire process of removal.⁶⁸ In referring to the initial step of gathering facts and evidence, CCEO uses the word “instruction” while CIC uses the term “investigation.” Hence, “the purpose of an investigation is to determine whether something that is alleged or asserted is actually true.”⁶⁹ A bishop may conduct this investigation either personally or through an investigator (CCEO c. 1468 §1; CIC c. 1717 §1). The general norm that “care must be taken so that the good name of anyone is not endangered from this investigation” (CCEO c. 1468 §2; CIC c. 1717 §2) shall not be forgotten because “no one is permitted to harm illegitimately the good reputation which another person enjoys, nor violate the right of any person to protect his or her own privacy” (CCEO c. 23; CIC c. 220). Any

⁶⁶John P. Beal “To Be or Not To Be That is the Question: The Rights of the Accused in the Canonical Penal Process,” *CLSA Proceedings* 53 (1991) 83.

⁶⁷Lucien Millette, “An Analysis of the Preliminary Investigation in Light of the Rights of the Accused,” *The Jurist* 75 (2015) 170.

⁶⁸Ángel Marzoa, “The Procedure for the Removal of Parish Priests,” 2120.

⁶⁹Charles G. Renati, “Conducting Canonical Investigations and Interviews,” *CLSA Proceedings* 67 (2005) 177.

such unlawful violation of it can be vindicated by the offended party.⁷⁰ At this stage of the procedure, a specific case file should be opened in connection with the removal of that particular parish priest.⁷¹

The preliminary investigation is of juridical nature. Thus, there should be written evidence signed by a notary [here a priest] for its validity (CCEO c. 253; CIC c. 483). The entire file, including the act of investigation, the decrees of the bishop who initiated and concluded the investigation, and the other materials that preceded the investigation, is to be kept in the secret archives (CCEO c. 1470; CIC c. 1719).

What is the spirit behind the investigation? From the point of view of a canonist, "the paramount goal of the investigation is to obtain the truth so that justice and the welfare of the souls can be served."⁷² Though not mentioned in the present law, it is always welcoming and it becomes a duty on the part of the bishop to consult the proto presbyter (vicar forane) and collect information before removing a parish priest, taking into account the latter's rights and duties (CCEO c. 278; CIC c. 555).

If allegations against a parish priest in charge of two parishes arise in connection with only one of them, should the primary investigation and establishing causes be conducted in both parishes? The Pontifical Council for the Interpretation of Legislative Texts (presently, the Pontifical Council for Legislative Texts) determined that it should not. The Pontifical Council reasoned that only rarely could a bishop establish sufficient reason to a priest from one parish but not the other. Moreover, the council concluded that when a single priest is entrusted with two neighboring parishes, it would be difficult to imagine a situation in which he maintains a good reputation in one parish and the contrary reputation in the neighboring parish.⁷³

⁷⁰Gianfranco Ghirlanda, "Doveri e diritti implicate nei casi di abusi sessuali preparati da chierici," *Periodica de Re Canonica* XCI (2002) 32-36.

⁷¹Frans Daneels, "The Removal or Transfer of a Pastor in the Light of the Jurisprudence of the Apostolic Signatura," *Forum* 8/2 (1997) 297.

⁷²William H. Woestman, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of canon Law* (Bangalore: Theological Publications in India, 2000) 157.

⁷³*Communicationes* 30 (1998) 31-32.

2.2. Discussion with the Parochial Assessors

When, after the preliminary investigation, the bishop wishes to proceed with removal, the next step is discussion with two parish priests, called assessors (CCEO c. 1391 §1; CIC c. 1742 §1).⁷⁴ Even if the investigation has convinced the bishop he has sufficiently grave cause to remove a parish priest, he must still summon the two parish priests (assessors), taken from the special group elected by the presbyteral council in a stable manner for this purpose, and discuss the matter with them.⁷⁵ These assessors are to be selected from the group of priests elected by the presbyteral council since ‘this is an important decision affecting the life of a community of the faithful as well as the pastor to be removed which must be done with utmost prudence in consultation with the members of *presbyterium*.’⁷⁶ Since this requirement is mandatory, a bishop who selects a priest outside of this group⁷⁷ invalidates the entire procedure.

All removals must be reviewed not only by the bishop himself, but also by two pastors chosen from a group approved for this purpose by the presbyteral council of the diocese. This review is to take

⁷⁴*Communicationes* 6 (1974) 42-43. This is not new to the ecclesiastical law. Canons 2148 §1, 2151 and 2153 of CIC 1917 demanded, for validity, the necessity of discussing twice with two examiners before issuing the decree of removal in the case of an irremovable parish priest. The same was to be observed in the procedures for removal of a movable pastor and for transfer as per canons 2159 and 2165 of CIC 1917. Cf. AAS pars II (1917) 404-407.

⁷⁵Total number of this group is more than two according to the tone of the canon: *cum duobus...*, *e coetu*) and the bishop selects two assessors from the designated group for each occasion and this stable group is distinct from the college of consultors whose members are freely named by the bishop. Cf. Ángel Marzoa, “The Procedure for the removal of parish priests,” 2120; Frans Daneels, “The Removal or Transfer of a Pastor in the Light of the Jurisprudence of the Apostolic Signatura,” *Forum* 8/2 (1997) 297.

⁷⁶Augustine Mendonça, “Canons 1742, §1 and 1745, 2° - Consultation with Two Pastors in the Removal of a Pastor,” in *Roman Replies and CLSA Advisory Opinions 2006*, eds. Stephen Pedone and Paul D. Counce (North Payne Street, Suite C: Canon Law Society of America, 2006) 99; *Communicationes* 11 (1979) 86.

⁷⁷There had been recourse before the *Signatura Apostolica* accusing that one of the assessors selected by bishop in the removal procedure was not from the list of legitimately elected priests by the presbyteral council for this purpose. Cf. Cacciavillan, *Coram*, June 28, 2003, Prot. no. 29531/98 CA, in *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, 398; *Studies in Church Law* 2 (2006) 275-296.

place, however, only 'after an enquiry has been conducted and it is proven that a cause mentioned in CIC c. 1740 is present' (c. 1742).⁷⁸ This discussion phase is preceptive and should be written, notarized and kept in the file so that its proof of the consultation ensures the validity of any later decree.⁷⁹ This discussion is consultative and hence, "although the consultation with the two pastors is required, the bishop is not bound to follow their counsel, though he would be imprudent to disregard it without serious reason."⁸⁰

Can the parish priest object to the pastor or pastors chosen by the bishop for the purpose of this discussion? If one or both of the pastors chosen for this purpose are prejudiced or biased against the pastor to be removed, he can ask the bishop to change them as a matter of natural justice. Therefore, if the accused pastor raised a reasonable objection to the choice of one or both of the pastor consultants, and the bishop failed to consider it, then the pastor removed can challenge the decree of removal precisely on this basis.⁸¹

As a result of deliberations with the two parish priests, the bishop may decide that there is insufficient cause for removal after all, or that the cause is not supported by adequate evidence. In such cases, he may take no further action. Once the session is ended, the two examiners, the ordinary, and the notary sign the acts. If after this discussion the bishop decides to remove the parish priest, he must then invite the priest to renounce his office.⁸²

2.3. Invitation to Resign

After discussing the matter with the assessors and determining that removal must take place, the bishop is to paternally counsel the parish

⁷⁸Richard Irons M. D. and Kevin M. McDonough, "Problem Clergy Other than Misconduct Cases: Profiles and Canonical Possibilities," *CLSA Proceedings* 56 (1994) 126.

⁷⁹Ángel Marzoa, "The Procedure for the Removal of Parish Priests," 2120-2121; Augustine Mendonça, "Canons 1742, §1 and 1745, 2°: Consultation with Two Pastors in the Removal of a Pastor," in *Roman Replies and CLSA Advisory Opinions* 2006, 102.

⁸⁰Edward G. Pfnausch, ed., *Code, Community, Ministry: Selected Studies for the Parish Minister Introducing the Code of Canon Law*, 83.

⁸¹Augustine Mendonça, "Canons 1742, §1 and 1745, 2°: Consultation with Two Pastors in the Removal of a Pastor," in *Roman Replies and CLSA Advisory Opinions* 2006, 101.

⁸²Maurice Connor, *The Administrative Removal of Pastors*, 97.

priest to resign within 15 days. At this stage, for the validity of the forthcoming process, both codes obligate the bishop to explain the cause and arguments for removal (CCEO c. 1391 §1; CIC c. 1742 §1). If the bishop here refuses to do so, he naturally negates the right of defense and enables the priest to lodge recourse against the decree for this reason.

The bishop's invitation to resign must be in writing and signed by him and the notary. One copy of the invitation should be kept in the file, and another sent to the parish priest in the safest and surest manner with an acknowledgment of the return receipt (CCEO c. 1192 §§1-2; CIC c. 1509). The signed receipt must be carefully kept in the file of the acts taken during the removal process. The invitation may be sent also through some delegate who should make sure that the pastor signs the receipt. If the invitation is oral, it must be made by the bishop in the presence of a notary who should record the fact and content of the invitation and, afterwards, sign the document and place it in the file.⁸³

This invitation clearly specifies that the priest has 15 days to resign, thereby granting a legal time limit to reply. Thus is fulfilled the provision of CCEO c. 1517 §1 (CIC c. 50), which stipulates that "before issuing an extra judicial decree, an authority is to seek out the necessary information and proof, hear or consult those who should by law be heard or consulted, and also hear those whom the decree directly touches and especially those whose rights can be injured."

2.4. Response to the First Invitation

What are the possible responses to this invitation to resign? Both codes foresee different responses to the invitation and stipulate: "A pastor can submit a resignation even conditionally, provided that the eparchial bishop can accept it legitimately and actually does accept it" (CCEO c. 1392; CIC c. 1743). The priest may respond that he resigns conditionally or unconditionally, propose arguments explaining why he should not resign, or even not respond. His response dictates whether or not the procedure must continue.⁸⁴

⁸³Maurice Connor, *The Administrative Removal of Pastors*, 97-98.

⁸⁴Thomas J. Green, "Possible Recourse of Congregation against Removal of Pastors," *CLSA Advisory Opinions* (2001-2005) 481.

2.4.1. Simple Resignation

A normal response to an invitation by the bishop to resign will be a simple resignation by the parish priest. For validity, the priest's resignation must be made to the authority competent to provide for the office in question, and either in writing or orally in the presence of two witnesses. A resignation that requires acceptance has no force if it is not accepted within three months (CCEO cc. 969-970 §1; CIC c. 189 §§1-3).

Should the simple resignation in this procedure be accepted for it to take effect? Canonists differ in this case of simple resignation. Eduardo Labandeira is of the position that "since, in the case contemplated by this canon, it is tendered at the invitation of the Ordinary; a simple resignation is valid and irrevocable without the need for subsequent acceptance by the authority."⁸⁵

The *Exegetical Commentary* gives an opposite affirmation that the pastor ceases from office by resignation accepted by the diocesan bishop as stipulated by CIC c. 538 §1 (CCEO c. 297 §1) and regulated by CIC c. 189 §3 (CCEO c. 970 §1) as it comments:

Although this canon is within the chapter that regulates the procedure for removal, when the renunciation is made, the procedure is interrupted and the process that leads to the vacancy of the office regains its normal course, as regulated in c. 538 [CIC] ...If one is treating a simple resignation, made *secundum legem* (made in writing or orally before two witnesses, c. 189 §1) as an answer to an invitation received, it's effect is produced the moment it is formally accepted by the bishop.⁸⁶

It seems canonical that the resignation at this stage of removal takes effect only after acceptance, since resignation from the office of a parish priest requires acceptance (CCEO c. 297 §1; CIC c. 538 §1) and the codes of canon law demand acceptance of resignation for cases which require it (CCEO c. 970 §1; CIC c. 189 §3). Since a parish priest is entrusted with the care of the souls in his parish (CCEO c. 281 §1; CIC c. 519), it is quite reasonable to conclude that resignation of a parish

⁸⁵Eduardo Labandeira, "The Procedure for the Removal or Transfer of Parish Priests," in *Code of Canon Law Annotated: Prepared under the Responsibility of the Instituto Martín de Azpilcueta, Second Edition Revised and Updated of the 6th Spanish Edition*, eds. Ernest Caparros, Michael Thériault, and Jean Thorn (Montréal: Wilson & Lauffleur Limitée, 2004) 1369.

⁸⁶Ángel Marzoa, "The Procedure for the Removal of Parish Priests," 2122.

priest at this stage of the procedure for removal takes effect only when it is accepted.

2.4.2. Conditional Resignation

The parish priest can make a conditional resignation (CCEO c. 1392; CIC c. 1743). Canonists agree that, to take effect, a conditional resignation must be accepted with the condition clearly admitted in the act of acceptance.⁸⁷

For a conditional resignation to be valid: (i) the condition must be one that is within the power of bishop, (ii) it must be accepted by the bishop within three months and (iii) the conditions should be fulfilled. In a conditional resignation, there is always the possibility of revoking the resignation until its acceptance has been intimated. Before accepting the condition, the bishop must determine whether the condition placed by the parish priest violates law or creates an obstacle to effective pastoral ministry. Once resignation (conditional or simple) is accepted, all the relevant material will be kept in a file in the archive.⁸⁸

2.4.3. Proposing Arguments for Not Resigning

The parish priest may produce arguments for not resigning. The bishop, after weighing the arguments presented by the parish priest, can decide either to refrain from removal or to issue a decree effecting it. If the priest's arguments are convincing, the bishop can stop the procedure. Even if the arguments proposed are not reasonable and convincing, the bishop cannot proceed arbitrarily with an immediate decree of removal. He has to make a second invitation, again asking the parish priest to resign from office.⁸⁹

2.4.4. Refraining from Reply

The parish priest may refrain from responding to the invitation within the time limit given. The pastor may not reply within the time stipulated in the decree of invitation for several reasons. The

⁸⁷Ángel Marzoa, "The Procedure for the Removal of Parish Priests," 2122.

⁸⁸CCEO cc. 969-970; CIC c. 189; Zenon Grocholewski, "Certain Special Processes (cc. 1357-1400)," in *A Guide to the eastern Code*, 784; Eduardo Labandeira, "The Procedure for the Removal or Transfer of Parish Priests," in *Code of Canon Law Annotated*, 1369.

⁸⁹*Communicationes* 6 (1974) 43.

document may be invalid, inadequate, or have gone unnoticed. The Priest might be deliberately evading a reply or legitimately hindered from sending one.

If the priest presents unconvincing arguments against resignation or refuses to respond, the bishop must proceed with the second invitation to resign.⁹⁰

2.5. Second Invitation to Resign

If the parish priest does not respond within the prescribed time, "the bishop is to repeat the invitation and extend the useful time to respond" (CCEO c. 1393 §1; CIC c. 1744 §1). Here the time limit is not given but left to the discretion of the bishop. However, a reasonable time to reply must be provided. At this stage, the bishop must ensure that his invitation to resign reaches the parish priest.⁹¹ The second invitation provides the priest with the opportunity to access the file that contains the investigative acts and to adduce further proof in his defense. Thus, this stage satisfies the right of defense⁹² in the administrative procedure for removing a parish priest.

There can be four different responses to this second invitation like: the parish priest showing willingness to resign, refraining from responding, refusing to resign from office without producing any reason or, finally, refusing to resign from office by producing reasons for not to resign.

2.5.1. Acceptance of the Parish Priest to Resign

The parish priest may accept resignation at this stage by claiming certain genuine impediments for his silence to the first invitation. The bishop can accept his resignation and the entire process can be closed,

⁹⁰Frans Daneels, "The Removal or Transfer of a Pastor in the light of the Jurisprudence of the Apostolic Signatura," *Forum* 8/2 (1997) 298.

⁹¹Eduardo Labandeira, "The Procedure for the Removal or Transfer of Parish Priests," in *Code of Canon Law Annotated*, 1370.

⁹²A decision of *Signatura Apostolica* declaring irremediable nullity of a Rotal decision due to the denial of access to the acts reaffirms that the right of defense is denied by omitting invitation to inspect the acts and thereby adducing further proofs which would help the defendant to know cause and arguments supporting the allegation and defend himself against the allegations raised. Cf. *Coram Sabbattani*, January 17, 1987, *Periodica de Re Morali Canonica Liturgia* 77 (1988) 329-359.

with the complete procedural acts placed in the secret archives. Here, the Bishop is to be clear that either the first invitation to resign had not reached him or he was impeded by just reasons.⁹³

2.5.2. Voluntary Silence of the Parish Priest

Both codes of canon law foresee the possibility of voluntary silence by the parish priest to the second invitation. Canon 1393 §2 of *CCEO* (*CIC* c. 1744 §2) stipulates: “If the bishop establishes that the pastor received the second invitation but did not respond even though not prevented by any impediment, or if the pastor refuses to resign without giving any reason, the bishop is to issue a decree of removal.” It is because the second dead-line is expired and the person has not responded. The bishop has proof that the party concerned has received the invitation, since he employed such means that permitted him to keep a receipt signed by the party concerned.

Even at this stage, the bishop is to be again sure that the pastor is not impeded from responding to the second invitation. If the bishop cannot establish for certain whether the parish priest was genuinely impeded, he cannot issue an immediate decree of removal. If the bishop, instead, is convinced that the parish priest was not impeded by any genuine reasons from responding to the second invitation, he can legitimately issue the decree of removal.⁹⁴

2.5.3. Refusal of the Parish Priest to Resign without any Reasons Proposed

The third situation foreseen in the canon that can lead to an immediate removal after the second invitation is ‘expressed refusal of the parish priest to resign even without proposing any reasons’ (*CCEO* c. 1393 §2; *CIC* c. 1744 §2). In such situations, when the refusal to resign is put forward, then the bishop need not wait for time allotted in the second invitation to expire. The law considers it already certain that the parish priest, through his explicit refusal, does not have the intention to reach an amicable solution and therefore, the bishop can legitimately issue a decree of removal putting an end to the entire process.⁹⁵ The only possibility left here is hierarchical recourse in accord with cc. 996-1006 of *CCEO* (*CIC* cc. 1732-1739).

⁹³Ángel Marzoa, “The Procedure for the Removal of Parish Priests,” 2124.

⁹⁴Ángel Marzoa, “The Procedure for the Removal of Parish Priests,” 2124.

⁹⁵Ángel Marzoa, “The Procedure for the Removal of Parish Priests,” 2124.

Therefore, in these two situations: (i) *voluntary silence of the pastor after the second invitation* and (ii) *explicit refusal of the pastor to resign without proposing any reasons after the second invitation*, the bishop can immediately issue a decree of removal.

2.5.4. Refusal of the Parish Priest to Resign with Reasons Proposed

The fourth possible outcome of the second invitation is that the parish priest refuses and presents reasons in his defense. In this situation, two possibilities remain:

i. *Sufficient Reasons Proposed to the Second Invitation*: Sometimes the parish priest may propose certain valid reasons that can justify his refusal to resign the office. If the reasons are sufficient and convincing, the bishop can stop the procedure by sending the acts of investigation to the archives.⁹⁶

ii. *Insufficient Reasons Proposed to the Second Invitation*: If the bishops finds the reasons presented in response to the second invitation insufficient and unconvincing, the process will not be resolved amicably. The next step that the bishop can take is to legitimately issue a decree of removal, taking the norms of CCEO c. 1394, 1^o-3^o (CIC c. 1745, 1^o-3^o) into consideration for validity.

2. 6. Invitation to Inspect the Acts by the Interested Party

The first step after *insufficient reasons proposed to the second invitation* is "to invite the pastor to organize his objections in a written report after he has inspected the acts, and offer any proofs he has to the contrary" (CCEO c. 1394, 1^o; CIC c. 1745, 1^o). As Eduardo Labandeira evaluates:

Up to this point the procedure has been intended to settle the matter in a conciliatory fashion. From now on, the case becomes in *contradictorio* and must be processed with the arguments and evidence supplied by the plaintiff, which the bishop shall examine together with the advisory group of parish priests referred to previously, before decreeing the removal.⁹⁷

Now, the case must be processed with the arguments and evidences supplied by the interested party.

⁹⁶Ángel Marzoa, "The Procedure for the Removal of Parish Priests," 2125.

⁹⁷Eduardo Labandeira, "The Procedure for the Removal or Transfer of Parish Priests," in *Code of Canon Law Annotated*, 1370.

i. *Inspection of the Acts*: Examination of the acts by the parish priest is very important, since he has the right to challenge the allegations after inspecting the acts. For this, he has the right to get a record of the investigation and other proofs adduced, not orally but a written description with reasons and arguments (CCEO c. 1391; CIC c. 1742). The proofs collected until then must be revealed to the priest since, as the *Signatura* has observed, “the opportunity to defend oneself, though, certainly requires that the very words or at least the very arguments of the witnesses may be known directly and objectively.”⁹⁸ Further, “A person is evidently deprived of his right of defense if he has no proper knowledge of what is alleged by the other party; and what he has adduced by way of proof.”⁹⁹

The bishop should follow two formalities at this stage of the removal process. He should: (a) offer the pastor a new opportunity to resign in view of the data in the investigation; (b) ensure that the interview, which CCEO c. 1517 §1 (CIC c. 50) requires, takes place with that party whose right could be injured.¹⁰⁰

ii. *Objections Organized by the Priest in Writing*: At this time, the parish priest appears in person in the procedure. He can bring any contrary proofs and organize a written report to present his challenges (CCEO c. 1394, 1°; CIC c. 1745, 1°). When he comes, he must have all the necessary elements at his disposal and he shall be given an opportunity to present reasons against the proof adduced in the acts.¹⁰¹ His reasons should be carefully recorded in the acts and, if the acts do not contain sufficient proof, the accused can contest the decree that follows.¹⁰²

⁹⁸Palazzini, *Coram*, June 22, 2002, Prot no. 31290/00 CA, in *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, 320.

⁹⁹Burke, *Coram*, November 15, 1990, *SRR Decreta* 8 (2002) 171; English Trans. “Jurisprudence: Apostolic Tribunal of Roman Rota, *Coram* Burke, November 15, 1990-Incidental Question: Nullity of a Sentence,” *Studia Canonica* 25 (1991) 511.

¹⁰⁰Ángel Marzoa, “The Procedure for the Removal of Parish Priests,” 2127.

¹⁰¹*Communicationes* 6 (1974) 43.

¹⁰²The *Signatura Apostolica*, while pronouncing an affirmative sentence against the illegitimacy both in the procedure used and in the substance of the decision in the dismissal of a religious presbyter, observed: “*Ex actis autem constare debebat sodali dimittendo concessum fuisse ius “suas rationes exponendi”;* *ad hunc finem responsiones in actis fideliter referendae erant* (can. 650 §3).” *Coram* Palazzini, January 23, 1988, Prot no. 15721/83 CA, *Il Diritto Ecclesiastico* 102

The two possibilities left here are either to avoid the removal or to proceed. If the parish priest presents convincing arguments with proof, the bishop can conclude the procedure and put the file of the investigation into the archives. If the proofs and arguments are not satisfactory, the bishop proceeds with removal and must again discuss the matter with the two assessors.¹⁰³

2.7. Second Discussion with the Parochial Assessors

CCEO c. 1394, 2° (CIC c. 1745, 2°) envisages that if the bishop still wants to remove the parish priest even after weighing the challenges and contrary proofs proposed by the priest during the inspection of the acts and interview, he has to discuss the matter with the two assessors mentioned in CCEO c. 1391 §1 (CIC c. 1742 §1).

Is the bishop bound to discuss the matter with the same parish priest with whom he first discussed the matter? The law has another provision that governs such situations. If the bishop cannot consult the one with whom he had the previous discussion, then he has to designate others from the same group to which canon 1742 §1 of CIC (CCEO c. 1391 §1) refers.¹⁰⁴

There are two possibilities left for the bishop even after this second discussion with the two assessors. The bishop may either refrain from the process or proceed with it.¹⁰⁵ Even at this stage, he can stop the procedure and send the entire acts to the secret archive. To do so, the bishop need not issue a decree; a stay order and filing of the *acta* are enough. The bishop should inform the parish priest that the procedure has been stayed.¹⁰⁶

(1991/II) 159. See also William L Daniel, ed., *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, 210.

¹⁰³Ángel Marzoa, "The Procedure for the Removal of Parish Priests," 2127.

¹⁰⁴CCEO c. 1394, 2°; CIC c. 1745, 2°; Ángel Marzoa, "The Procedure for the Removal of Parish Priests," 2127.

¹⁰⁵"Dopo aver dato facoltà al parroco di vedere gli atti e di rispondere, L'Ordinario, uditi gli assessori, decide se emettere o no il decreto di rimozione." *Communicationes* 6 (1974) 43.

¹⁰⁶Eduardo Labandeira, "The Procedure for the Removal or Transfer of Parish Priests," in *Code of Canon Law Annotated*, 1370.

2.8. Issuance of the Decree of Removal

After *the second discussion* with the two parish priests prescribed by law, if the bishop is convinced of the existence of reason/reasons that may cause serious harm to the effectiveness of ministry, he can canonically issue the decree of removal (CCEO c. 1394, 3^o; CIC c. 1745, 3^o).¹⁰⁷ Once the *invitation to inspect the acts*, the *interview of the parish priest in question*, and the *second discussion with the parochial assessors* has taken place, the bishop is free to issue the decree of removal. The decree should express in it the motives regarding the law and the facts.¹⁰⁸ The procedure for the removal of parish priests is also followed for priests who resist retiring after the age of seventy-five.¹⁰⁹

The definitive decree of removal of the parish priest comes into effect at the moment it is legitimately intimated in writing (CCEO cc. 974 §2, 1511; CIC cc. 193 §4, 54 §2). Consequently, he ceases from office *de facto*. His ordinary executive powers of governance (CCEO c. 991; CIC c. 143) and the habitual faculties (CCEO c. 982; CIC c. 132) are suspended with it.¹¹⁰ The only possibility left before the removed parish priest is to make recourse.

Conclusion

The first phase in the procedure for the administrative removal of parish priests ends with the decree of removal. If the removed priest does not make hierarchical recourse against the decree of removal within the peremptory time limit, the office becomes vacant and the bishop is free to appoint another parish priest. The bishop can either entrust him another ecclesiastical office or leave him without an office,

¹⁰⁷Cf. Ángel Marzoa, "The Procedure for the Removal of Parish Priests," 2127.

¹⁰⁸Haec, enim, necessitas motiva in iure et in facto exprimendi oritur ex ipsa natura decisionis admionistrativae: cum decisio administrativa impugnationi subiaceat, sive hierarchicae sive etiam iurisdictionali, si ipsa, in casu particulari, relativa motivazione careat, subiectum passivum illam congruis argumentationibus impugnare non valeret." *Coram Palazzini*, January 23, 1988, Prot no. 15721/83 CA, *Il Diritto Ecclesiastico* 102 (1991/II) 160; William L Daniel ed., *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, 212.

¹⁰⁹Pontificia Commissio Decretis Concilii Vaticani II Interpretandis, *De Procedura Sequenda in Remotione Parochorum*, July 7, 1978, AAS 70 (1978) 534.

¹¹⁰Augustine Mendonça, "The Effect of the Recourse against the Decree of Removal of a Parish Priest," *Studia Canonica* 25 (1991) 150.

always with appropriate provisions for his sustenance. If the removed parish priest lodges recourse against the decree of removal, there begins the second phase in this procedure at the hierarchical level which will be discussed in the second part of this article.