

THE MODE OF EXERCISE OF THE POWER OF GOVERNANCE IN THE INTERNAL FORUM

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Abstract

The power of governance is exercised either in the external forum or in the internal forum. Since one and the same power is exercised in both forums, the internal forum is no more considered as an exclusive domain of moral order. The manner of its exercise distinguishes the difference between the two forums. In the internal forum, the power is exercised in a hidden or secret manner. The favours, such as dispensations of impediments, remissions of penalty, etc. are granted in the internal forum.

Key Words: Power of Governance, External Forum, Internal Forum, Internal Sacramental Forum, Forum of Conscience, Ordinaries, Hierarchs, Apostolic Penitentiary, Penitentiaries, Impediments, Irregularities, Censures, Dispensations, Absolutions.

Introduction

The internal forum, together with the external forum, is an integral part of the canon law system and is also one of its specific or unique characteristics. While speaking about the power of governance (*potestas regiminis*), the *Code of Canon Law* of 1983 (CIC) and also the *Code of Canons of the Eastern Churches* of 1990 (CCEO) speak about the duality of the manner of its exercise: the external forum and the internal forum (CIC c. 130; CCEO c. 980). The power of governance, which is generally exercised in the external forum, is also exercised in the internal forum in some specific or extraordinary circumstances. While the Codes affirm that the same power is exercised in one forum or the other, they neither define them nor give the details regarding the exercise of this power in the internal forum. In this context, this

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article is an attempt to explore the exact nature and understanding of the concept of internal forum, the matters handled in the internal forum, and the process applied in exercising the power in this forum.

1. Internal Forum

Though the precise terminology of “external and internal forums” is found only in later centuries, the concept of the dual forums seems to be in existence in the theological and canonical thinking of the Catholic Church since the twelfth century.¹ From that time onward, a

¹ The canonical use of the term “forum” has its direct relationship to the original Roman notion of forum, that is, as the “field” where juridical acts are conducted in general. More precisely, it meant the field where magistrates used to exercise justice in the process of determining the “right thing to do,” that is the law. Thus, the notion of “forum” is tied to the exercise of jurisdiction. The terminology “external and internal forums” is the product of long evolution in the canonical doctrine of the Church. Antonio Mostaza Rodríguez, in his scholarly studies published in 1960s (Mostaza Rodríguez, “Forum internum—Forum externum. I. En torno a la naturaleza jurídica del fuero interno,” *Revista Española de Derecho Canónico* 23 [1967] 253-331; “Forum internum—Forum externum. II. Naturaleza de la Jurisdicción del fuero interno,” *Revista Española de Derecho Canónico* 24 [1968] 339-364; “De foro interno iuxta canonistas posttridentinos hispanos,” in *Acta Conventus Internationalis canonistarum: Romae, 21-25 mai 1968*, Pontificia Commissio Codici Iuris Canonici Recognoscendo [Vatican: Typis Polyglottis Vaticanis, 1970] 269-294) demonstrated this evolution from a first distinction between *ius poli* and *ius fori*, understood by Gratian as canon and civil law, up to the distinction of the CIC/1917, passing by way of distinctions between forum of judgments and penitential forum, penitential forum (which would then be considered the forum of God) and external forum, while the forum of judgments would also broaden out to a noncontentious external forum. With the evolution of the discipline of the sacrament of penance, another forum, different from the strictly judicial one, which was publicly used by the judges, began to surface. Thus, Bernard of Pavia distinguished between manifest judgment (public ecclesiastical judgment) and occult judgment (hidden or penitential judgment). The scholars who followed spoke well of this distinction between the contentious forum of tribunals, in which everything was public and was admitted in proportion to the proofs accepted, and the forum that would be called either “spiritual” or “penitential,” using diverse denominations. The scholastic theologians began to speak of the “forum of conscience” (penitential/sacramental forum) as opposed to the contentious forum or the forum of judgment *exterius* (the forum of ecclesiastical courts/the judicial forum). Different terms such as, *forum poenitentiae*, *forum confessionis*, *forum Dei*, *forum spirituale et poenitentiale*,

distinction between an internal or private and external or public fields of exercise of power in the Church was commonly accepted, and diverse terminologies were employed to denote this distinction. Based on this long-run theological and canonical thinking and the jurisprudence of the time, CIC/1917 c. 196² made an equivalence between the internal forum and the forum of conscience. In fact, the canon manifested the consideration, held by many traditional and contemporaneous canonists, that the internal forum belonged to the domain of morals. This position implicitly negated the juridical nature of the power exercised in the internal forum and endorsed confusion between the juridical, moral, and sacramental orders.³

However, by the time of the beginning of the revision of the CIC, there had already emerged points of convergence in canonical doctrine regarding the internal forum.⁴ Two positions have been

forum conscientiae, etc. were used in contrast to *forum exterius*, *forum iudiciale*, *forum contentiosum*, etc. In the post-Tridentine period, canonists began to use the term “forum of conscience” but without identifying it with the penitential/sacramental forum. Gradually, the expression “forum of conscience” began to be identified with “the internal forum” especially by those who saw the internal forum as the sphere of obligations and moral decisions. According to Mostaza, Francisco Suárez was the first to identify the internal—even nonsacramental—forum with the forum of conscience. The period between the Council of Trent and CIC/1917, many scholars specifically used the terminology of “internal forum” as opposed to “external forum” and in their efforts to describe the internal forum, they referred to it as the forum of conscience. By eighteenth century, the official Church documents also began to adopt the expression “internal forum” and CIC/1917 incorporated the terminology of “external and internal forum,” describing the internal forum as the forum of conscience. (See Urrutia, “Internal Forum–External Forum: The Criterion of Distinction,” 637, 657, 663, 653; Juan Ignacio Arrieta, “The Internal Forum: Notion and Juridical Regime,” *Studia Canonica* 41 [2007] 27-29).

² CIC/1917 c. 190. “The power of jurisdiction or governance, which exists in the Church by divine institution, is for the external forum and for the internal forum or conscience, whether sacramental or extra-sacramental.” References to the ‘external and internal forum’ are found in several canons of CIC/1917, for example, canons 43, 56, 79, 110, 154 196, 202, 207, 209, 239 §1, 17^o, 258, 399 §3, 501, 524, 1037, 1044, 1046, 1047, 1122, 2200 §2, 2218 §2, 2232 §1, 2239 §1, 2251, 2253, 1^o, 2264, 2284, 2312, 2314 §2, 2334, 2^o, 2350.

³ Arrieta, “The Internal Forum: Notion and Juridical Regime,” 31.

⁴ Especially, the writings of Dominican canonist, Ludwig Bender O.P. (Ludovicus Bender, *Potestas Ordinaria et Delegata: Commentarius in Canones*

confirmed, first, the affirmation of the juridical nature of the action in the internal forum, and second, the unity of ecclesiastical jurisdiction, that the same power operates in both forums.⁵ In this context, the second number of the "Guiding Principles of the Revision of the Code of Canon Law," approved by the Synod of Bishops in 1967, affirmed the necessity to include the norms regarding the jurisdictional activity in the internal forum and recommended that there should be harmony and coordination between the external and internal forums, avoiding possible conflicts, especially in regard to the sacraments and ecclesiastical penal law.⁶

The new perspectives and conceptions developed in the canonical doctrine were incorporated in the revision of the canon on internal and external forums. Consequently, the new canon, that is, CIC c. 130,⁷ contains substantial differences from its predecessor, that is, CIC/1917 c. 196. It explains that the external forum is the normal ambience of the exercise of the power of governance in the Church, but admits that the existence of the internal forum in the legal system of the Church is essential that in some specific circumstances, the power is exercised in the internal forum only (*pro solo foro interno*).

Following the Latin Code, the new Eastern Code also assimilated the new canonical doctrine regarding the internal forum. Therefore, the parallel Eastern canon, CCEO c. 980, states that the power of governance is either in the external forum or in the internal forum (CCEO c. 980 §1). Differing from the Latin Code, CCEO does not make

196-209 [Roma: Desclée & C- Editori Pontifici, 1957]; "Forum externum et forum internum," *Ephemerides Iuris Canonici* 10 [1954] 9-27; the historical studies of Mostaza Rodríguez (mentioned above); the writings of Velasio De Paolis (V. De Paolis, "Natura e funzione del foro interno," in *Investigationes theologico-canonicæ*, ed. Pontificia Università Gregoriana [Roma: Università Gregoriana Editrice, 1978] 115-142), etc, contributed substantial developments in the understanding of the concept of internal forum.

⁵ Arrieta, "The Internal Forum: Notion and Juridical Regime," 32, 34.

⁶ *Communicationes* 1 (1969) 79; Jordan Hite and Daniel J. Ward, *Readings, Cases, Materials in Canon Law*, Revised Edition (Collegeville, MN: The Liturgical Press, 1990) 86.

⁷ CIC c. 130. "Of itself the power of governance is exercised for the external forum; sometimes however it is exercised for the internal forum only, but in such a way that the effects which its exercise is designed to have in the external forum are not acknowledged in that forum, except in so far as the law prescribes this for determinate cases."

the statement that the proper field of the power of governance is the external forum. Rather, it presents both forums in an equal manner. In its second paragraph, the canon deals with the effects of the exercise of power in the internal forum.

Thus, the revised Codes, both CIC and CCEO, affirm the existence of these two forums in the canonical discipline⁸ and accept the validity of the power of governance for the internal forum. Different from CIC/1917 c. 196, the canonical internal forum, in which the power of governance is exercised, is not equated with “the forum of conscience” in the new Codes. Their equivalence was no more supported in the canonical doctrine, developed in the middle of the twentieth century, instead, their distinction was acknowledged and clarity was brought in.⁹ And so, the canonical internal forum is no longer called the “forum of conscience.” During the revision process, the Pontifical Commission for the Revision of CIC (PCCICR) clarified this distinction¹⁰ and formulated its canon accordingly. The Eastern canon, CCEO c. 980 §1, also adopted this distinction as it does not describe the internal forum in connection with the exercise of the power of governance as the forum of conscience, diverging from its predecessor, *Cleri sanctitati* c. 138.¹¹ By stating that the one and only

⁸ Other canons in CIC which refer to external and internal forums are: CIC cc. 37, 64, 74, 142 §1, 144 §1, 508 §1, 596 §2, 1074, 1079 §3, 1081, 1082, 1123, 1126, 1145 §3, 1319 §1, 1340 §1, 1357 §1, 1361 §2, 1732. Other canons in CCEO which mention external and internal forums are: CCEO cc. 511 §2, 791, 796 §2, 798, 799, 815, 842, 856, 893 §2, 992 §2, 994, 996, 1403 §1, 1514.

⁹ It is because of the developments in the theological and canonical fields attached to the conciliar teachings. According to Urrutia, “if the forum of conscience is ‘man’s most secret core, and his sanctuary, [where] he is alone with God whose voice echoes in his depths’ (AG 16), the canonical internal forum certainly cannot simply be identified with the forum of conscience, because it is subject not only to the human intellect, as making judgments in close and exclusive relationship with God, but is also subject to the power of governance of the Church.” Urrutia, “Internal Forum–External Forum: The Criterion of Distinction,” 637.

¹⁰ *Communicationes* 9 (1977) 235. “Ceterum non potest haec potestas quae pro solo foro interno exercetur dici fori conscientiae.”

¹¹ CS c. 138. “The power of jurisdiction or government which is in the Church by Divine Institution is to be distinguished into that of the external forum and that of the internal forum or of the conscience, which again can be sacramental and extra-sacramental.” Translation by Victor Pospishil, *The Oriental Code of Canon Law*, 87.

potestas regiminis, “which exists in the Church by divine institution” (CIC c. 129 §1; CCEO c. 979 §1), is exercised in both forums, the new Codes establish that the internal forum is no more the exclusive sphere of morals; but it is also a juridical forum, an area where real, juridical power is exercised.¹² It is not merely an institution to deal with issues pertaining exclusively to personal conscience, on the contrary, it is an integral part of the juridical system of the Church having its own juridical regime.

While the power of governance is distinguished as legislative, executive, and judicial powers (CIC c. 135 §1; CCEO c. 985 §1), the internal forum is concerned with the executive power.¹³ According to Arrieta,

The jurisdiction exercised in the internal forum (c. 130) has an executive character (being neither legislative nor judicial). This is proven by the fact that, within the diocesan structure, this jurisdiction is granted either to the ordinary or to the local ordinary (cf. for example, cc. 1047 §4, 1048, 1080), that is, to those who have general ordinary executive power in the external forum. On the other hand, the judicial vicar is excluded from the jurisdiction in the internal forum.¹⁴

Similar to the external forum, the power in the internal forum may arise from a given office, i.e., the ordinary power, or from a delegation, i.e., the delegated power¹⁵ (CIC c. 142 §2; CCEO c. 992 §2). However, there is an important peculiarity in the possession and exercise of power in the internal forum.

While, on the one hand, those who have this power in the external forum also have it in the internal one, on the other hand, it may happen that those who have this power in the internal forum might not have it in the external one. As a consequence, those invested with an ordinary executive power in the external forum—for example, the ordinary of canon 134, or the religious superior of

¹² Urrutia, “Internal Forum–External Forum: The Criterion of Distinction,” 635; Arrieta, “The Internal Forum: Notion and Juridical Regime,” 36.

¹³ John M. Huels, “Commentary on CCEO c. 980,” in *A Practical Commentary to the Code of Canons of the Eastern Churches*, ed. John D. Faris and Jobe Abbass (Montréal: Wilson & Lafleur, 2019) 1835.

¹⁴ Arrieta, “The Internal Forum: Notion and Juridical Regime,” 40.

¹⁵ Arrieta, “The Internal Forum: Notion and Juridical Regime,” 36.

canons 134 and 596 §2—may as well exercise it in the internal forum with respect to the faithful under their jurisdiction. As will be shown, the opposite does not always occur.¹⁶

Arrieta presents the following reasons upon which the ecclesiastical jurisdiction of the internal forum is founded: the needs of the *salus animarum*; the fundamental right of protection of the good name of every member of the faithful; the need to promote repentance in the subject without making the recourse to authority heavier; and, in some cases, the necessity to facilitate guaranteed pastoral assistance to the faithful.¹⁷

1.1 The Criterion of Distinction between the External Forum and Internal Forum

Referring to the canons which mention the external or internal forums in the Latin Code (CIC cc. 37, 74, 1074, 1079 §3, 1081, 1082, 1123, 1126, 1145 §3, 1145 §2, 1357 §1), Urrutia argues that the criterion that distinguishes between the external forum and the internal forum is “more that of the *public/hidden* exercise of power.”¹⁸

The immediate criterion used by the Code, therefore, seems clear: the exercise of jurisdiction of which the community has legitimate knowledge because there are legitimate proofs of it, is the exercise of jurisdiction for the external forum or in the external forum. And the effects of this exercise, publicly known, belong to the external forum. On the other hand, if the exercise of jurisdiction remains hidden from the community as such, and the effects produced remain similarly hidden because there are no legitimate proofs, then this is the exercise of jurisdiction for the internal forum or in the internal forum.¹⁹

Urrutia also explains that “the public is not the same as external, because external activity or exercise of jurisdiction can remain occult. Public exercise is always external, but the reverse is not true, because

¹⁶ Arrieta, "The Internal Forum: Notion and Juridical Regime," 36.

¹⁷ Arrieta, "The Internal Forum: Notion and Juridical Regime," 35.

¹⁸ Urrutia, "Internal Forum–External Forum: The Criterion of Distinction," 639-640.

¹⁹ Urrutia, "Internal Forum–External Forum: The Criterion of Distinction," 640.

external exercise is not always public."²⁰ The power of governance, which is usually exercised in the external forum, "is exercised for the internal forum, if the effects it has there remain hidden and cannot be observed or recognized by the community for lack of legitimate proofs."²¹

Even if, in a certain sense, it is true that the object of the internal forum is always occult and the exercise of power is for the internal forum when it is occult, in line with Bender and Mostaza,²² Urrutia proposes that "the matter or object is not an adequate criterion" to distinguish the external and internal forums. According to him, it is a mistaken approach to base the distinction between the two on the matters or objects proper to each, "as if occult or public matters were to be considered immutably such, and thus as belonging exclusively to one or other *area* of the internal forum or the external forum."²³ He observes that "we cannot consider any matter as belonging exclusively to one or the other forum, but that the same matter will be dealt with in one or the other according to the way of actuation."²⁴ He also makes the following arguments in this regard.

If some acts belong to the internal forum and others to the external forum, this is not because they belong to different areas or spheres, one of which concerns acts of a social nature and the other acts of

²⁰ Urrutia, "Internal Forum–External Forum: The Criterion of Distinction," 640, fn 17.

²¹ Urrutia, "Internal Forum–External Forum: The Criterion of Distinction," 641.

²² Urrutia mentions that canonists like Capobianco used to base the distinction between the two forums on the matters or objects proper to each, as if matters and objects of their very nature belonged to one or another forum (P. Capobianco, "De ambitu fori interni ante Codicem," *Apollinaris* 8 [1935] 590-591). Mostaza objected this argument and pointed out that public censures can be remitted in the internal forum (Mostaza, "Forum internum–Forum externum. I," 294), and Bender claimed that it is not only the *matter* that determines the forum, because, although occult facts are normally to be dealt with in the internal forum, they can also *change* forums, due to the simple fact that the subject acts in a public form. Urrutia, "Internal Forum–External Forum: The Criterion of Distinction," 642-643, 646-647.

²³ Urrutia, "Internal Forum–External Forum: The Criterion of Distinction," 642.

²⁴ Urrutia, "Internal Forum–External Forum: The Criterion of Distinction," 647.

an individual nature. Rather, it depends on how the acts in question are produced: whether in a secret manner or in a manner that can be recognized by the community.

An act with social dimensions is not an act of the external forum because it is social, but because it is made publicly and in such a way that the community can see it. Similarly, a so-called personal act is not an act of the internal forum *because it is not social*, but because and to the extent that it remains occult and cannot be recognized by the community. If it is inconceivable that a certain act, such as the promulgation of a law, belongs to the internal forum, this is because the promulgation of the law is by definition a public act. On the other hand, an instruction imposed by the legitimate superior is necessarily for the external forum only if it is imposed in the presence of witnesses or with a lawful document that is publicly known, while the same instruction could have been imposed in an occult manner, and hence for the internal forum, if it had been imposed without witnesses, or with a lawful document that is, however, kept secret. Thus, the difference between the exercise of power for the internal forum and for the external forum lies neither in the matter ruled on, nor in the nature of the act itself, but in the *way* in which the power is exercised.²⁵

Therefore, the criterion of distinction between the external forum and the internal forum is precisely “on the basis of the manner in which power is exercised,”²⁶ and internal forum means “the occult exercise of power, which cannot be observed and of which there is no lawful proof” and its “effects also remain occult and unrecognizable.”²⁷ The absence of publicity in the exercise of power is the constitutive element of the internal forum. If the exercise of power is public and

²⁵ Urrutia, "Internal Forum-External Forum: The Criterion of Distinction," 644-645.

²⁶ This criterion was proposed in 1950s by Bender (Bender, "Forum externum et forum internum," *Ephemerides Iuris Canonici* 10 (1954) 9-27; "Potestas Ordinaria et Delegata," in *Commentarius in Canones* 196-209 [Rome, 1957] 14). After Bender, Deutsch also stated that if the juridic act is so performed that it can be established by juridic proof, it is done in the external forum, if not, it is done in the internal forum (B. F. Deutsch, *Jurisdiction of Pastors in the External Forum* [Washington, DC: 1957] 95). See Urrutia, "Internal Forum-External Forum: The Criterion of Distinction," 645-646.

²⁷ Urrutia, "Internal Forum-External Forum: The Criterion of Distinction," 645.

verifiable, then it belongs to the external forum. If it is not known to the public and if it cannot be verified, then it is in the realm of the internal forum. "The internal forum and the external forum are not separate areas or spheres, but that they merely indicate different ways in which the power of governance is exercised or in which the faithful act—ways that can be public and socially demonstrable, or occult and socially unrecognizable."²⁸

According to Arrieta, the internal forum is simply a "mode" of action of the ecclesiastical power of governance, or a 'way' through which this power expresses itself when pastoral needs require it.²⁹ Therefore, it can be called as "a hidden act of jurisdiction." Even the facts or situations which *per se* are not properly hidden, because they might be "relatively" known by others, can be asked to be dealt with in the internal forum.³⁰

Antonio Viana states that the distinction between the external forum and the internal forum "refers to the fact that the power of governance itself is capable of manifesting public effects, by means of juridical acts that can be determined by the habitual means of proof (external forum), or in an occult manner (internal forum) when the *salus animarum* renders the disclosure of these juridical acts unnecessary or even harmful."³¹ In other words, the internal forum lacks formal external appearances and does not usually refer to the interests of third parties.³²

²⁸ Urrutia, "Internal Forum–External Forum: The Criterion of Distinction," 653-654.

²⁹ Arrieta, "The Internal Forum: Notion and Juridical Regime," 27. The notion of "forum," according to Arrieta, "neither means a field of jurisdiction nor a peculiar category of acts. It is a 'way' through which issues become manifest and are formally placed in front of the ecclesiastical authority. Consequently, it is a kind of juridical treatment, a 'way' of action which the ecclesiastical authority has to undertake in some specific cases in order to principally protect some specific principles (i.e., *salus animarum*, good name, etc.)." Arrieta, "The Internal Forum: Notion and Juridical Regime," 33.

³⁰ Arrieta, "The Internal Forum: Notion and Juridical Regime," 36.

³¹ Antonio Viana, "Commentary on CIC c. 130," in *Exegetical Commentary on the Code of Canon Law*, ed. Ángel Marzoa, Jorge Miras and Rafael Rodríguez-Ocaña, vol. 1 (Montreal: Wilson & Lafleur and Chicago: Midwest Theological Forum, 2004) 824.

³² Arrieta, "The Internal Forum: Notion and Juridical Regime," 37.

Thus, the two forums are neither two different powers nor separate areas of the same power. Rather, they indicate two different modes of action in the exercise of the same power. Viana says, “we are neither talking about different powers nor the contrast of the external juridic order and the moral order nor about different ambits of the same power of governance, depending on whether the exercise of the power is public or not, in view of the objective needs of the faithful.”³³ According to John M. Huels, the external forum can be described as “the public, visible, provable dimension of juridic activity;” and the internal forum as “private, confidential, and even secret.”³⁴ In other words, the internal and external forums “refer to the extent of publicity of an act of power of governance.”³⁵

1.2 The Effects of the Exercise of the Power in the Internal Forum

According to CIC c. 130 and CCEO c. 980 §2,³⁶ when the power of governance is exercised for the internal forum alone, it can have effects even for the external forum; however, these effects are not recognized in the external forum, except insofar as the law establishes it in determined cases.

It is because of the characteristic of the internal forum, that is, its hidden or occult nature. While the external forum provides the necessary certainty of juridic acts, the occult manner of the internal forum does not provide such certainty due to the absence of proofs known to the public. A juridic act in the internal forum is a matter of the occult exercise of power, which cannot be observed and of which there is no lawful proof. Therefore, its effects also remain occult and unrecognizable and have no possibility of lawful proof. The community is unaware of these effects, which remain unknown to it.³⁷ While the exercise of the power in the external forum is documented,

³³ Viana, “Commentary on CIC c. 130,” 824.

³⁴ Huels, “Commentary on CCEO c. 980,” 1835.

³⁵ Huels, “Commentary on CCEO c. 980,” 1835

³⁶ CIC c. 130 states. “..., so that the effects which its exercise is meant to have for the external forum are not recognized there, except insofar as the law establishes it in determined cases.” CCEO c. 980 §2. “If the power of governance is exercised for the internal forum alone, the effects that its exercise are meant to have for the external forum are not recognized there, except insofar as the law establishes it in determined cases.”

³⁷ Urrutia, “Internal Forum–External Forum: The Criterion of Distinction,” 645.

recorded, and capable of being proven in the public, the same in the internal forum is not generally documented or recorded, and so, often unable to be proven. In fact, there is usually a grave moral and canonical obligation to keep the matters of the internal forum confidential.³⁸ Often the documents are destroyed, and if the exercise of power takes place in the internal sacramental forum, the documents must be destroyed. In such cases, the effects as well as the process remain hidden and not provable in the external forum. To have effects in the external forum means to "become public, and thus observable, recognizable, and recognized by the community."³⁹ Since the exercise of power in the internal forum is in a hidden manner, not known to the public, the effects of that exercise are also not recognized in the public.

It is not regarding the validity of the exercise of the power but regarding the recognition of its effects. There is no doubt on the juridical efficacy and validity of the act of the power of governance exercised in the internal forum. The acts in the internal forum are valid and juridically efficacious in the internal forum. However, due to the lack of its necessary formal or legitimate proofs, which are needed for the recognition of an act of jurisdiction in the external forum, the juridical act done in the internal forum is not recognized by the canonical order of the external forum.⁴⁰ The lack of recognition in the external forum is because of the lack of legitimate proof.

The jurisdictional activity in the internal forum is fully efficacious to remove sanctions, impediments, and irregularities. Then *per se*, at least in principle, the second act of jurisdiction placed in the external forum would not be required to definitively eliminate the juridical obstacle already removed by the act of power in the internal forum. It can thus happen that a problem of security and publicity, which is a problem of proof appears. Canon 130 is very clear in affirming that the act of jurisdiction produced in the internal forum is not recognized in the external one (*in hoc foro non recognoscatur*), unless the law prescribes this for specific cases: the

³⁸ Huels, "Commentary on CCEO c. 980," 1836.

³⁹ Urrutia, "Internal Forum-External Forum: The Criterion of Distinction," 641.

⁴⁰ Arrieta, "The Internal Forum: Notion and Juridical Regime," 32-33.

law must peremptorily indicate in which cases an act of the internal forum is recognized in the external one as well.⁴¹

Both, CIC c. 130 and CCEO c. 980 §2, state that the effects of the exercise of power in the internal forum meant for the external forum are recognized there in the cases determined by law. The provision given in CIC c. 1082 and CCEO c. 799 concerning the dispensation from an occult impediment to marriage is such a case determined by law.⁴² According to these canons, unless there is a contrary determination in the rescript, a dispensation from an occult impediment, granted in the internal non-sacramental forum is to be recorded in the secret archive of the eparchial curia. In case the impediment might later become public, then the document, kept in the secret archive, shall be produced, and accepted with the effect that the dispensation given in the internal forum becomes accepted also in the external forum. There is no need of a fresh exercise of the power in the external forum or no additional dispensation in the external forum is required.⁴³

Thus, CIC c. 1082 and CCEO c. 799 explicitly affirm the validity of the effects of the act of power of governance exercised in the internal forum. Through the dispensation given in the internal forum, the impediment is removed, and the person is free to marry. There is no question of the invalidity of the marriage that followed. The predecessor of CCEO c. 799 was *Crebrae Allatae* c. 37. This former canon had required as necessary a further dispensation if the first dispensation had been given only for the sacramental, internal forum and then the impediment became public (*sed est necessaria, si dispensatio concessa fuerat tantum in foro interno sacramentali*). The same requirement was given in CIC/17 c. 1047, the predecessor of CIC c. 1082. Regarding the reason for such an omission, PCCICOR replied that the idea is well known since the dispensation in the internal

⁴¹ Arrieta, "The Internal Forum: Notion and Juridical Regime," 37.

⁴² CCEO c. 799. "Unless there is a contrary determination in a rescript of the or of the patriarch or local hierarch within the limits of their competency, a dispensation from an occult impediment granted in the internal non-sacramental forum is to be recorded in the secret archive of the eparchial curia; no other dispensation for the external forum is necessary, even if the occult impediment should become public later."

⁴³ Urrutia, "Internal Forum-External Forum: The Criterion of Distinction," 641-642.

sacramental forum cannot be annotated.⁴⁴ Therefore, “it is evident that, in this case, a new dispensation is needed since, dealing with the sacramental, internal forum, the first dispensation cannot be registered, not even in the secret register.”⁴⁵ John P. Beal also states that “when an impediment legitimately dispensed by a confessor in the internal sacramental forum becomes public, a new dispensation and a convalidation of the marriage may be necessary for the external forum.”⁴⁶

This canonical provision regarding the occult impediments of marriage shall be applied to all other juridic acts in the internal forum with regard to the recognition of their effects. The exercise of the power for the internal forum is real and the effects are valid. However, they face the problem of proving their existence, since they are exercised in a hidden or secret manner. So, they are not recognized in the external forum, except insofar as the law establishes it in determined cases (CIC c. 130; CCEO c. 980 §2). Since no other case is explicitly mentioned in the Codes, in other exercises of the power for the internal forum, in case the matter later becomes public, there would need a fresh exercise of the power in the external forum to have its effects recognized in the external forum. Nevertheless, if the exercise of the power in the internal forum can also become public with the existence of legitimate proofs, then its effects can also be recognized without a fresh exercise of the power. In this case, the whole matter enters the external forum from the internal forum.

The norm given in CIC c. 74 and CCEO c. 1527 §2 is another example of the rule concerning the effects of the exercise of power in the internal forum. Granting a favour orally can be an occult exercise of power and can remain occult, which can be freely used in the internal forum. The favour granted so is valid and can be used by the beneficiary. However, to use it in the external forum, i.e., to use it publicly in the life of the community, it must be proven whenever there is a legitimate demand. Since the community does not know that such favour has been granted, the community cannot acknowledge its

⁴⁴ *Nuntia* 15 (1982) 68.

⁴⁵ Pablo Gefaell, “Commentary on CCEO c. 799,” in *Practical Commentary to the Code of Canons of the Eastern Churches*, 1435.

⁴⁶ John P. Beal, “Chapter III: Diriment Impediments Specifically [cc. 1083-1094],” in *New Commentary on the Code of Canon Law*, ed. John P. Beal, James A. Coriden, and Thomas J. Green (New York: Paulist Press, 2000) 1282.

use in the external forum unless the beneficiary provides proof.⁴⁷ There should be legitimate proofs—testimony of witnesses, documents, etc.—for this exercise of the power in order to have its effects in the external forum. If it is not provable it cannot be used in the external forum. When it is proven in the public, it becomes a matter in the external forum.

1.3 The Distinction between Sacramental and Non-Sacramental Internal Forum

CCEO c. 980 §1 explicitly refers to the distinction in the internal forum into sacramental and non-sacramental. Though this distinction is not explicitly mentioned in CIC c. 130,⁴⁸ the Code acknowledges this distinction as it is clear from other canons. For example, CIC cc. 508, 1079 §3, 1357 §1⁴⁹ speak about the internal sacramental forum and CIC c. 1082 speaks about the non-sacramental internal forum.⁵⁰ The canonical internal forum is called “sacramental,” when the power of governance is exercised within the sacrament of penance, otherwise, it is called “non-sacramental.”

As the canonical internal forum is not equivalent to the forum of conscience, in the same way, it is also not solely exercised through the sacrament of penance. The exercise of the power of governance in the internal forum can be either within the sacrament of penance or outside the sacrament of penance. When it is exercised within the sacrament, the internal forum is called “sacramental,” and when it is

⁴⁷ Urrutia, "Internal Forum–External Forum: The Criterion of Distinction," 641.

⁴⁸ Whereas its predecessor, CIC/17 c. 196, had explicitly stated that the internal forum be “sacramental or extra-sacramental.”

⁴⁹ Since Book VI of CIC was revised by Pope Francis, through the Apostolic Constitution *Pascite Gregem Dei* (PGD), on 23 May 2021, the canons belonging to the Book VI of CIC are cited from the newly revised book VI. In case, the new canon differs from that of 1983, either in content or in its number, then the reference will be indicated as CIC/PGD.

⁵⁰ According to Mostaza, beginning with the Council of Trent, the distinction between “sacramental” and “extra-sacramental” internal forum was also established in penitential matters or matters of internal forum, as the Holy See gave diocesan bishops the faculty to dispense or to absolve, even outside the sacrament of penance, from some specific irregularities, impediments and penal sanctions. Mostaza, “De foro interno iuxta canonistas postridentinos hispanos,” 273-274, as cited by Arrieta, "The Internal Forum: Notion and Juridical Regime," 29.

exercised outside the sacrament, the internal forum is called “non-sacramental.” In both cases, it is always a jurisdictional activity, derived from the *potestas regiminis*.⁵¹

When the power of governance is exercised for the internal sacramental forum, any proof of recording of the act is excluded even if there is no danger of violating the seal of confession or causing harm to the penitent (cf. CIC cc. 983-985; CCEO cc. 733-734). On the other hand, proofs and recording are possible in the internal non-sacramental forum, provided there is no danger of violating the person’s rights to privacy and a good reputation, for example, by recording the juridic act in the secret archive (cf. CIC c. 1082; CCEO c. 799).⁵²

2. Acts in the Internal Forum and the Competent Persons

The power of governance is exercised in the internal forum only in specific situations in accordance with the norms of law. A usual situation of its exercise is the granting of dispensations, especially the dispensations from the occult impediments⁵³ to marriage (CIC cc. 1079, 1080, 1082; CCEO cc. 796, 797, 799), or from the occult impediments/irregularities⁵⁴ to receiving or exercising sacred orders (CIC cc. 1047, 1048; CCEO c. 767).

In the Latin Code, the internal forum involves also the ambit of penal law—the remission of penalties in the internal forum. This involvement happens in the context of the *latae sententiae* censures,⁵⁵

⁵¹ Arrieta, "The Internal Forum: Notion and Juridical Regime," 38.

⁵² Huels, "Commentary on CCEO c. 980," 1836.

⁵³ According to CCEO c. 791 (CIC c. 1074), "an impediment that can be proven in the external forum is considered to be public one; otherwise, it is occult." In the technical sense, provided by this canon, an occult impediment means that which cannot be proven in the external forum (Gefaell, "Commentary on CCEO c. 797," 1433). However, it is possible that an occult impediment can later become a "public" one (CCEO c. 799; CIC c. 1082).

⁵⁴ Both Codes speak of the impediments from receiving and exercising sacred orders (CIC cc. 1040-1044; CCEO cc. 762-763). Among them, CIC makes a distinction between simple impediments and irregularities (CIC c. 1040). Impediments of perpetual nature or character are called irregularities (CIC cc. 1041, 1044). Other impediments are called simple. A simple impediment can cease when the cause of the impediment ceases.

⁵⁵ Censures means "medicinal penalties depriving obstinate offenders of access to various ecclesiastical goods, such as the sacraments or church

where there can be undeclared censures.⁵⁶ The absolution or remission from the *latae sententiae* censures which have not been declared (CIC cc. 508 §1, 566 §2, 976, 1357 §1) is another important act for the internal forum.

Not only absolutions or remissions from censures or dispensations from canonical norms, but other kinds of acts of executive power can also be administered in the internal forum. According to Arrieta, "Administrative acts of the internal forum consist of absolutions, dispensations, commutations, sanctions, remissions or other kinds of favours."⁵⁷ The Codes which speak about the dispensations or the

offices, until they are restored to full ecclesial communion" (Thomas J. Green, "Title IV: Penalties and Other Punishments [cc. 1331-1340]," in *New Commentary on the Code of Canon Law*, 1549). They include the penalties of excommunications, interdicts, suspension (CIC/PGM cc. 1331, 1332, 1333). Ordinarily penalties are *ferendae sententiae*, that is, not binding upon the offender until it has been imposed by a competent authority. However, in the Latin Code, there are also *latae sententiae* penalties, i.e., penalties attached to the law or the precept in such a way that the offender incurs it simply by committing the offence. Such penalties are incurred automatically (*ipso facto*) upon the commission of an offence, without any formal procedure or the intervention of any authority. A penalty is *latae sententiae* only if the penal norm expressly indicates it (CIC c. 1314).

⁵⁶ When *latae sententiae* censures are incurred, there may not be any official declaration that such penalties have been incurred, especially, when the delicts are occult, or non-public. They are called non-declared censures. CIC/PGD c. 1331 distinguishes between a non-declared *latae sententiae* excommunication and a declared *latae sententiae* excommunication. The canon indicates that official declaration is necessary to enforce the full effects of the censure. For example, the formal Church intervention in the declared *latae sententiae* excommunication, as in the case of *ferendae sententiae* excommunication, entails more extensive legal restrictions for the excommunicated person than were operative before such intervention. It is the declaration of the *latae sententiae* penalty (as in the case of the imposition of a *ferendae sententiae* penalty) that substantially modifies the juridical *status* of the person excommunicated. Thus, the acts of governance, which are illicit in cases of undeclared excommunication, will be invalid if the *latae sententiae* excommunication has been declared by a competent authority (cf. CIC/PGD cc. 1335 §2, 1357, 1109, etc.). In the cases of undeclared *latae sententiae* censures, the law also provides some legal relaxations (cf. CIC/PGD cc. 1335 §2, 1357, etc.). Green, "Title IV: Penalties and Other Punishments [cc. 1331-1340]," 1550.

⁵⁷ Arrieta, "The Internal Forum: Notion and Juridical Regime," 37.

absolutions in the internal forum (CIC cc. 508 §1, 566 §2, 976, 1047, 1048, 1079, 1080, 1082, 1357 §1; CCEO cc. 767, 796, 797, 799), also indicate the following acts that may be placed in the internal forum: dispensations from a private vow (CCEO c. 893 §2); granting favours orally to be used in the internal forum (CIC c. 74; CCEO c. 1527 §2); and convalidation of marriage in the internal forum (CIC c. 1080 §2; CCEO c. 797 §2).

2.1 Competent Persons for the Exercise of Power in the Internal Forum

The power of governance, the one and the same power exercised in both forums, may be obtained either through a given office (ordinary power) or through delegation (delegated power). A person with the ordinary or delegated executive power of governance can exercise that power in the internal forum as well as in the external forum with respect to the faithful subject to them unless the law or the nature of the matter establishes otherwise.

The Apostolic Penitentiary is the competent dicastery of the Apostolic See to deal with the matters regarding the internal forum for the whole Church (PB 117). It grants absolutions, dispensations, commutations, validations, condonations, and other favours for the internal forum, whether sacramental or non-sacramental (PB 118). The specific actions of the internal forum, which are reserved to Apostolic See, are handled by this dicastery. At the same time, a faithful is always free to refer his/her case to the Apostolic Penitentiary even if it is not reserved to the Apostolic See.

The Apostolic Penitentiary possesses all the necessary faculties, with the sole exception of those which the Supreme Pontiff expressly declared to the Cardinal Penitentiary as reserved to himself. Consequently, it can place all acts of competence of the other dicasteries of the Roman Curia within the internal forum. The eventual efficacy of these acts in the external forum is always subject to the common legislation of the Church, in conformity with c. 130 of the *Code of Canon Law*.⁵⁸

Secondly, those invested with general ordinary executive power in the external forum, i.e., the ordinaries and local ordinaries in the Latin

⁵⁸ *Regolamento della Penitenziaria Apostolica*, promulgated on 16 June 2005, art. 2, as cited by Arrieta, "The Internal Forum: Notion and Juridical Regime," 41.

Church (CIC cc. 134) or the hierarchs and local hierarchs in the Eastern Churches (CCEO cc. 984) —including the superiors of the religious institutes who have the power of governance (CIC c. 134 §1; CCEO cc. 441 §2, 511 §2)—may also exercise it in the internal forum, unless the law or the nature of the matter establishes otherwise. They can exercise the power of governance in the internal forum with respect to those who are subject to them according to the norms of law (CIC cc.136, 596 §2; CCEO cc. 986, 441 §2, 511 §2). Matters in the internal forum that are not reserved to the Apostolic See can be addressed to one’s own ordinary/hierarch.

Besides the Apostolic See and the ordinaries/hierarchs vested with ordinary jurisdiction in the internal forum in the Church, there are also others endowed with the faculties to exercise the power of governance for internal forum, such as the diocesan penitentiaries, certain chaplains, confessors in some extraordinary situations, pastors or the sacred ministers at the celebration of marriage, etc. While the penitentiaries and chaplains exercise these faculties in ordinary circumstances, others can do it only in extraordinary situations or cases. In some cases, it can be exercised only for the internal sacramental forum, excluding the competence for the non-sacramental internal forum as well as for the external forum.

The penitentiaries in the dioceses of the Latin Church—the “canon penitentiary” or the “priest penitentiary,”⁵⁹—possess the ordinary faculties to remit, in the internal sacramental forum, all undeclared *latae sententiae* censures which are not reserved to the Apostolic See (CIC c. 508).⁶⁰ By virtue of the office, they can remit in confession any undeclared *latae sententiae* censures, which are reserved to the local ordinary, without the need for recourse to the local ordinary.⁶¹ They

⁵⁹ If there is a chapter of canons in the diocese, one of the canons is to be entrusted with these faculties in a stable manner and he will be called the “canon penitentiary.” If there is no chapter in the diocese any priest can be appointed by the diocesan bishop to exercise these faculties in a stable manner and he will be called the “priest penitentiary” or the “penitentiary” (CIC c. 508). Ernest Caparros and Helene Aube, eds., *The Code of Canon Law Annotated* (Montreal: Wilson & Lafleur and Woodridge: Midwest Theological Forum, 2004), 420-421.

⁶⁰ Barbara Anne Cusack, “Chapter IV: Chapter of Canons [cc. 503-510],” in *New Commentary on the Code of Canon Law*, 665.

⁶¹ Thomas J. Green, “Title VI: The Cessation of Penalties [cc. 1354-1363],” in *New Commentary on the Code of Canon Law*, 1570.

cannot absolve any *ferendae sententiae* penalties or expiatory penalties. While the Apostolic Penitentiary has competence in both sacramental and non-sacramental internal forums, the diocesan penitentiaries can exercise their faculties only within the internal sacramental forum.

According to CIC c. 566 §2, chaplains, who minister in hospitals and prisons, and on sea voyages, also have the faculty to absolve the faithful, entrusted to their care in those places, from undeclared and unreserved *latae sententiae* censures, even outside the danger of death. The faculty of these chaplains is not restricted to the sacramental forum.⁶²

Both Codes grant some specific faculties to the confessors concerning the canonical internal forum in certain extraordinary situations or cases. According to CCEO c. 767, in more urgent occult cases, a confessor can dispense from impediments to exercising sacred orders already received if the competent authority cannot be reached and there is a danger of grave harm or infamy. The confessor in fact grants the dispensation and the penitent can licitly exercise the sacred orders he has already received, but with due regard for his duty to approach the competent authority as soon as possible (CCEO c. 767 §3).⁶³

About the impediments of marriage, in cases of danger of death, CIC and CCEO grant the confessor the power to dispense from occult impediments of ecclesiastical law except the impediment arising from the sacred order of priesthood (CIC c. 1079 §3; CCEO c. 796 §2). They can use this power either within the act of sacramental confession or outside it. However, they can grant the dispensation only to occult impediments. The confessors are also competent to grant dispensation from the impediments of marriage, except that arising from sacred orders or from a public vow of chastity in a religious institute of pontifical right, in the urgent or emergency situation, called *omnia*

⁶² Gerard Sheehy, et. al., eds., *The Canon Law: Letter & Spirit* (London: Geoffrey Chapman, 1995), 311.

⁶³ The parallel canon, CIC c. 1048, does not speak about the dispensation given by the confessor. Instead, it states that in the more urgent occult cases, if the ordinary or, in the case of the irregularities mentioned in canon 1041, 3^o and 4^o, the Penitentiary cannot be approached, and if there is imminent danger of serious harm or loss of reputation, the person who is irregular for the exercise of an order may exercise it. There remains, however, the obligation of his having recourse as soon as possible to the Ordinary or the Penitentiary, without revealing his name, and through a confessor.

parata (CIC c. 1080 §1; CCEO c. 797 §1).⁶⁴ Here, they can invoke this power to dispense subject to two conditions, namely that it is not possible to approach the local ordinary, and that the impediment be an occult one. They can grant the dispensation only for the internal forum, whether within the act of sacramental confession or outside it (CIC cc. 1080 §1, 1079 §3; CCEO cc. 797 §1, 796 §2).

In the realm of penalties, according to CIC c. 1357, a confessor can in the internal sacramental forum remit a *latae sententiae* censure of excommunication or interdict which has not been declared in the circumstance that it is difficult for the penitent to remain in a state of grave sin for the time necessary for the competent superior to provide the remission. Since the penalty of excommunication forbids the reception of sacraments (CIC/PGD c. 1331 §1), an excommunicated person cannot receive the sacrament of penance until prior remission has been received from the censure. He/she must first be remitted from the censure of excommunication and only subsequently can receive absolution from his sins. It could be a heavy burden of conscience of the penitent. For managing such an aching state, the Church grants some limited provisions for the remission of certain censures in the internal sacramental forum. In such situations, the law of the Church confers the power of jurisdiction on the confessor for remitting the said censures.⁶⁵ This is a true remission of the censure, but on the condition that the penitent accepts the obligation, under pain of again incurring the censure, to have recourse within one month to the competent authority either personally or through the confessor, and to abide by his instructions (CIC c. 1357 §§1, 2).⁶⁶

According to CIC c. 1079 §2, the parish priest (pastor), a properly delegated sacred minister (bishop, priest, deacon), and the available priest or deacon who are called to assist at the marriage celebrated in

⁶⁴ The situation of *omnia parata* regarding the celebration of marriage happens whenever an impediment is discovered after everything has already been prepared for the wedding. It is traditionally known as *casus perplexus*. The conditions that make the situation urgent or emergency: 1) everything had already been prepared for the wedding; 2) the marriage cannot without probable danger of grave harm be postponed until a dispensation is obtained from the competent authority. Caparros and Aube, eds., *The Code of Canon Law Annotated*, 824.

⁶⁵ Caparros and Aube, eds., *The Code of Canon Law Annotated*, 1057.

⁶⁶ Since there are no *latae sententiae* censures in the Eastern Code, there is no parallel canon.

extraordinary form according to CIC c. 1116, can dispense from the impediments of ecclesiastical law, except that arising from priesthood, in danger of death situations. They can use this power only in cases where the local ordinary cannot be reached. They can dispense from occult as well as public impediments (cf. CIC c. 1079 §1). If the impediment is occult, then the dispensation granted will be in the internal forum. The same persons are also endowed with the power to dispense from all impediments to marriage, except that arising from sacred orders, or from a public vow of chastity in a religious institute of pontifical right, in the situation of *omnia parata*, if the local ordinary is inaccessible and that the case is an occult one (CIC c. 1080).⁶⁷ Since they are authorized to dispense only for "occult cases," the dispensation shall be granted in the internal forum.

Parallel to these provisions in the Latin Code, in the Eastern Code the special power to dispense in cases of danger of death and in situations of *omnia parata* is granted to the pastor, to the priest endowed with the faculty of blessing the marriage, and also to the priest invited to bless the marriage celebrated in extraordinary canonical form as per canon 832 §2 (CCEO cc. 796 §2; 797).

The Latin Code also provides that any priest can validly absolve any penitent from any censures in the circumstance of the danger of death (CIC c. 976). If the censure is imposed or declared or one reserved to the Apostolic See, when recovered, the penitent is bound to have recourse to the competent authority (CIC cc. 976, 1357 §3).

3. The Manner of Functioning in the Internal Forum

The characteristic of the internal forum is the hidden nature of the juridical procedure and of the juridical effects. According to Arrieta, "It is a hidden juridical act that follows the equally hidden nature of the actions from which the process arises, and thus the confidential manner in which the given subject began it."⁶⁸ This particular

⁶⁷ According to the commentators the category of "occult cases," mentioned in this canon, is broader than that of occult impediments of CIC c. 1074. They include not only impediments that cannot be proved in the external forum but also those that are not publicly known; an impediment not divulged *de facto*. Beal, "Chapter III: Diriment Impediments in General [cc. 1073-1082]," in *New Commentary on the Code of Canon Law*, 1281.

⁶⁸ Arrieta, "The Internal Forum: Notion and Juridical Regime," 36.

characteristic provides the peculiarities in the process carried out in the internal forum.

The matter of internal forum is generally the favours (*gratiae*), such as dispensations, absolutions, commutations, validations, condonations, etc. In the external forum, these favours are granted through the administrative act, called 'rescripts,' which acknowledges a favour granted in response to a request (CIC c. 59 §1; CCEO c. 1150 §2, 3^o).⁶⁹ According to CIC c. 59 §2 and CCEO c. 1527 §1, the norms established in the canons of the Codes for rescripts are valid also "for the oral granting of a permission or favours unless it is otherwise clearly evident." Therefore, these norms on rescripts can be applied to all favours granted in the internal forum, while keeping its hidden nature.

Since one of the main purposes of exercising power for the internal forum is to guarantee the full respect of the good name of the faithful, whenever a member of the Christian faithful becomes aware of his/her legal incapacity or legal sanction, which is not public, he/she can approach the competent ecclesiastical authority for a dispensation, remission, or any such favour to be granted in the internal forum. In all these cases, the name of the person should be omitted in the written recourse to the competent authority (cf. CIC c. 1048).⁷⁰

The act of power in the internal forum is done in a hidden way, excluding the parameters of publicity. Hence, its process assumes the nature of a voluntary, confidential, and private action. According to Arrieta, "In the canonical order, the jurisdiction of the internal forum is thus shaped as a paradigm of a voluntary jurisdiction, and not of a contentious suit."⁷¹

A favour usually requires a request. As in the case of rescripts in the external forum, in the internal forum also the favour is granted to a request in accordance with the norms of law. It may be a voluntary and confidential declaration of a Christian faithful to a competent ecclesiastical authority regarding facts or situations to which the

⁶⁹ John P. McIntyre, "Chapter III: Rescripts [cc. 59-75]," in *New Commentary on the Code of Canon Law*, 116.

⁷⁰ Carlos Encina Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*, (Cittá del Vaticano: Libreria Editrice Vaticana: 2013) 35.

⁷¹ Arrieta, "The Internal Forum: Notion and Juridical Regime," 35.

canonical order ties any incapacitating element,⁷² such as an impediment, censure, etc. Here the subject himself/herself gives his/her assent to the fact that an impediment (or irregularity) exists or a penal sanction has happened. In other words, the subject admits that he/she actually incurred a censure, or is under an impediment, or irregularity. The petition is made with the declaration for the favour of dispensing or remitting rather than placing any contention. The action in the internal forum begins with such a declaration. This can be done by either the party himself/herself or a third party in the name of the subject. Thus, any Christian faithful can directly or through his/her pastor, confessor, or spiritual director can make this petition to the competent ecclesiastical authority. It can be done either within the sacrament of penance (internal sacramental forum) or outside the sacrament of penance.

In order to provide a general understanding of the procedure followed in the internal forum, two acts of the internal forum—granting dispensations from occult irregularities/impediments to the sacred orders and the remission of occult and undeclared censures—are briefly presented here.

3.1 Dispensation from Irregularities/Impediments in the Internal Forum

If the cause of the irregularities/impediments (CIC cc. 1040-1044; CCEO cc. 762-763) is not a publicly known fact, they are considered as occult and they can be dispensed in the internal forum (for example, the irregularities/impediments arising from direct participation in abortion or homicide, which are not known to the public). The Apostolic Penitentiary is the competent dicastery to grant in the internal forum the dispensations from the irregularities/impediments reserved to the Apostolic See (PB 118).⁷³ The procedure in

⁷² Arrieta, "The Internal Forum: Notion and Juridical Regime," 35.

⁷³ In the Latin Code, the irregularities and impediments regarding the reception or the exercise of the sacred orders reserved to the Apostolic See are mentioned in canon 1047. Concerning the reception of sacred orders: irregularities from the public delicts of apostasy, heresy, or schism; from the public delict of attempted marriage, from the delicts of willful homicide or abortion, whether public or occult; and the impediment of marriage (CIC c. 1047 §2, 2^o-3^o). Concerning the exercise of sacred orders: irregularity from the public delict of attempted marriage; from the delicts of willful homicide or abortion, whether public or occult (CIC c. 1047 §3). The irregularity of

approaching the Apostolic Penitentiary for obtaining dispensations in the internal forum is presented here. More or less the same procedure can be followed in matters of internal forum subject to the competence of other authorities.

The recourse can be made either in the internal sacramental forum or in the non-sacramental forum, which is also protected by secrecy.⁷⁴ Therefore, the confessor, spiritual father or a confidential canonical advisor can guide the cleric who has incurred the irregularity to initiate recourse to the Apostolic Penitentiary or can make recourse on behalf of the cleric, insuring, of course, that confidentiality is maintained and the case remains occult.⁷⁵ It is more convenient that the confessor, spiritual father or a confidential canonical advisor present the recourse than the cleric himself.

The recourse for the dispensation is to be submitted by means of a letter written to the Apostolic Penitentiary. "The request should omit the name of the person and explain clearly what brought about the state of irregularity."⁷⁶ For example, in the case of abortion, the request must report the following details: when did the cooperation in abortion take place and how many times; how was the cooperation; is the candidate/cleric the father of the unborn child; if the candidate/cleric amended; etc. In cases of irregularities concerning the reception of the sacred orders, the suitability of the candidate and in cases of irregularities concerning the exercise of the sacred orders, the amended way of life of the cleric, are also to be mentioned in the request.⁷⁷ The Apostolic Penitentiary examines the requests speedily and sends the response within a few days to the confessor or spiritual

attempted marriage for exercising as well as receiving sacred orders is reserved to the Apostolic See only if it is public (CIC c. 1047 §2, 1^o, §3). In the Eastern Code, the patriarch is also competent to dispense from these impediments for candidates or clerics who have a domicile or quasi-domicile within the territorial boundaries of his Church (CCEO c. 767 §2).

⁷⁴ Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*," 36.

⁷⁵ Kaslyn, "Irregularities and Impediments for the Exercise of Orders: Context and Praxis," *CLSA Proceedings* 75 (2003) 210.

⁷⁶ Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*," 35.

⁷⁷ Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*," 35.

director⁷⁸. If the dispensation is granted in the internal sacramental forum, the confessor has to destroy the document after communicating the content of the response.

3.2 Remission of Censures in the Internal Forum

Whenever a member of the faithful is repentant of the sin, or his/her contumacy ceases, remission of his/her censure “cannot be refused since a member of the faithful has a true right to be released from it (cf. c. 1358 §1 CIC).”⁷⁹ As seen above, if it is a question of secret cases and that the censure has not been declared in the external forum, it can be remitted in the internal forum.

For the censures reserved to the Apostolic See, the competent authority to grant remission in the internal forum is the Apostolic Penitentiary.⁸⁰ A faithful involved in a *latae sententiae* censure, which is

⁷⁸ Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*,” 37.

⁷⁹ Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*,” 20.

⁸⁰ The delicts which incur automatically (*latae sententiae*) the punishment of excommunication and for which absolution is reserved to the Apostolic See are: the profanation of the Consecrated Species (CIC/PGD c. 1382); the use of physical force against the Roman Pontiff (CIC c. 1370 §1); the absolution of one’s accomplice in a sin against the sixth commandment of the Decalogue (CIC/PGD c. 1384); the consecration of a bishop without a pontifical mandate and reception of such an ordination (CIC/PGD c. 1387); the direct violation of the sacramental seal of Confession (CIC/PGD c. 1386 §1); attempt to confer sacred ordination on a woman or the reception of such ordination (CIC/PGD c. 1379 §3). Delicts which incur *latae sententiae* excommunications without reservation are: apostasy, heresy, schism (CIC/PGD c. 1364 §1); abortion (CIC/PGD c. 1397 §2). Delicts which incur *latae sententiae* interdicts and suspension are: using physical force against a bishop (CIC c. 1370 §2); attempting to preside at an Eucharistic celebration (CIC/PGD c. 1379 §1, 1^o); attempting to give absolution or hearing confession (CIC/PGD c. 1379 §1, 2^o); false denunciation of solicitation (CIC/PGD c. 1390 §1); attempted marriage by a perpetually professed religious who is not a cleric (CIC/PGD c. 1394 §2).

There are no *latae sententiae* punishments in the Eastern Code. On the other hand, it preserves the system of reserved sins. The sins of the direct violation of the confessional seal and the absolution of an accomplice in a sin against chastity, are reserved to the Apostolic See; the sin of procuring a completed abortion is reserved to the eparchial bishop (CCEO c. 728). The system of *latae sententiae* censures of the Latin Code and the system of

not declared can directly request the Apostolic Penitentiary or to the local ordinary if the censure is not reserved to the Apostolic See. For those censures which are not reserved to the Apostolic See, he/she can also go to confession to the diocesan penitentiary, who has by law the necessary faculties to remit the censure (CIC c. 508 §1). In cases reserved to the Apostolic See, or in non-reserved cases if he/she does not want to go to the diocesan penitentiary, a faithful can approach any confessor seeking assistance for the remission of his/her censures in the internal sacramental forum. The confessor can assist him/her in either of the following ways:

(i) Explaining to the penitent his/her canonical status, the confessor has to reveal to him/her that he does not have the proper faculty to grant the remission from the censure. He has to instruct the penitent regarding the obligation to present a recourse to obtain absolution from censorship. Though the penitent could himself/herself make the recourse for the remission of the censure, it is better that the confessor makes the recourse requesting the authorization to be able to absolve the penitent from the censure incurred. If so, the confessor will have to make a new appointment with the penitent, suggesting an appropriate time to the penitent to come back to receive remission of the censure and absolution of his sins and the penance. Thereafter, the confessor should contact the authority, competent to remit the censure as soon as possible—the Apostolic Penitentiary or the local ordinary—requesting for the necessary delegation to absolve the penitent from the censure incurred and the indications regarding the penance that should be imposed on the penitent, through a normal and simple letter. The letter should contain necessary information about the penitent and explain objectively and concisely the delict committed, making reference to all the circumstances that led to the delict and that could aggravate or diminish it, such as, the age, mental condition, and state of life of the penitent; when and how the delict was committed; the number of times the delict committed; the circumstances involved; etc. The details are to make possible a more just assessment of the concrete case and to help the determination of the penance or other remedies to be imposed by the Apostolic

reserved sins in the Eastern Code cannot be said as theoretically and legally equal. However, the procedure followed to grant remission from undeclared *latae sententiae* excommunications in the internal sacramental forum can also be followed for granting absolution from the reserved sins.

Penitentiary or the local ordinary.⁸¹ The letter should not contain the name of the penitent and any reference that could identify him, and should be sent by means which guarantees confidentiality. When the recourse reaches the Apostolic Penitentiary, it tries to send response within twenty-four hours. All the recourses to the Apostolic Penitentiary are absolutely free of charge.⁸² It will be so, also in the diocesan level. The response, always with a protocol number, would include the following contents: authorization to the confessor, instructions to the confessor and to the penitent, the penance that should be imposed upon the penitent, requirements for the reparation of scandal or damage, etc. (CIC c. 1357 §2). Once the penitent returns to the confessor to receive remission of the censure and absolution of his sins and to receive his penance, the confessor has to communicate the content of the response to him. Since the penitent has the right to maintain his anonymity, the best way to communicate the response is “to do so in within the context of a new celebration of confession.”⁸³ After communicating the content and the protocol number of the response, the confessor should then destroy it. The penitent should be instructed to keep a record of the protocol number, which can be used in the future in case any necessity arises, especially if he needs to make another recourse.⁸⁴

(ii) The second possible way for the confessor is to apply the provisions of CIC c. 1357, i.e., the so-called “absolution in an urgent case.”⁸⁵ Accordingly, the confessor can remit a *latae sententiae* censure of excommunication or interdict, which has not been declared. This option be adopted in cases where it is difficult for a penitent, truly repentant of the crime committed, to remain in a state of grave sin and

⁸¹ Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*,” 25-28.

⁸² Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*,” 30.

⁸³ Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*,” 31.

⁸⁴ Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*,” 31.

⁸⁵ According to the mind of the Apostolic Penitentiary, in a certain sense, it is the most convenient for the well-disposed penitent, because he will be able to begin receiving the sacraments immediately. [http://www. Penitenzieria.va/content/penitenzieriaapostolica/it/tribunale-del-foro-interno/delitti.html](http://www.Penitenzieria.va/content/penitenzieriaapostolica/it/tribunale-del-foro-interno/delitti.html).

not receive the sacraments until a competent superior remit the penalty (CIC c. 1357 §1). The confessor may remit undeclared *latae sententiae* excommunications or interdicts even if they are reserved to the Apostolic See. However, it is prescribed that “in granting the remission, the confessor is to impose upon the penitent, under the pain of again incurring the censure, the obligation to have recourse within one month to the competent Superior or to a priest having the requisite faculty, and to abide by his instructions” (CIC c. 1357 §2). Therefore, the penitent has the obligation of making recourse for the permanent remission of the censure to the competent authority within one month. If such a recourse is not made, the censure technically recurs. Though the obligation to make the recourse for obtaining remission from the competent authority is imposed on the penitent, the canon states that the recourse may be made through the confessor (CIC c. 1357 §2). Many penitents may find the required recourse difficult given their unfamiliarity with the law. In this case, the confessor has the duty within thirty days to refer the case to and receive the penance from the competent authority to which the censure is reserved. The confessor is to make the recourse without mentioning any names of the penitent (CIC c. 1357 §2). The competent authority will examine the case, ratify the absolution, give instructions on the matter and will impose penance. As an integral part of remitting the censure, the canon instructs the confessor that in the meantime, he is to impose an appropriate penance and require the repairing of any damage or scandal, if necessary (CIC c. 1357 §2). According to Commentz, the confessor is to remit the penitent from the censure, by virtue of CIC c. 1357, and absolve him from his sins, only if the penitent is truly sorry for the delict he has committed.⁸⁶ The confessor must also have asked the penitent to return at a mutually convenient time to receive the penance.⁸⁷ The details of the recourse are of the same manner mentioned above, while it should be clearly stated that he has already absolved the penitent using the faculty granted by CIC c. 1357. He should also indicate the penance imposed and the measures suggested to repair the scandal and damage if any. After communicating to the penitent, the content and the protocol

⁸⁶ Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*,” 24.

⁸⁷ Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*,” 24.

number of the response of the Penitentiary, the confessor should then destroy it as soon as possible.⁸⁸

Conclusion

The Church, in fulfilling her mission, exercises the power entrusted to her, in the internal forum as well as in the external forum. The one and the same power is administered in both forums, though in different manners for the salvation of the souls. Therefore, the internal forum, just like the external forum, has its importance and inevitability in the juridical system of the Church. It is no more equated with the forum of conscience. Those who are vested with ordinary power of governance, specifically the executive power, in the external forum also have it in the internal forum. At the same time, in order to provide remedies in some extraordinary situations in the lives of the faithful, the laws of the Church make provisions for granting special faculties in the internal forum to its sacred ministers, especially to the confessors, and pastors. The proper character of the internal forum is its hidden or occult nature. This specific character belongs to the manner of exercising power in the internal forum more than regarding the matter concerned. Therefore, those who are entrusted with the power to administer in the internal forum, either ordinarily or extraordinarily, have to proceed in a hidden or secret manner, keeping the confidentiality of the matter.

⁸⁸ Commentz, *When and How to Have Recourse to the Apostolic Penitentiary*," 31.