

Editorial

PROCESS AND PROCEDURES IN CHURCH LAW

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Almost all successful human endeavours, religious or secular/profane, be it personal or societal/communitarian, will have, perhaps, to narrate the story of multiple processes and procedures that help to accomplish them. In the secular level, we can notice that big business firms operate with well-designed processes in order to be successful and profit making. Success, however, means not only achieving material gains, progress, development or occupying high posts and positions in the eyes of the world, but also winning fellow human beings or restoring broken relationship leading to peace, serenity and reconciliation. The very Scripture provides some instances of a process which Jesus taught to win a brother or sister, that is, the process of reconciliation. Evangelist Mathew narrates such an example and this reconciliatory process entails three procedural steps:

If your brother sins against you, go and tell him his fault, between you and him alone. If he listens to you, you have gained your brother. But if he does not listen, take one or two others along with you, that every word may be confirmed by the evidence of two or three witnesses. If he refuses to listen to them, tell it to the church; and if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector. Truly, I say to you, whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven (Mt. 18:15-18).

St. Paul, admitting the fact that there might arise issues and disputes among the faithful as in any community, endorses the Christian way of settling issues and disputes (see, ICor. 6:1-7) as taught by Christ: "If one of you has a dispute with a fellow-Christian, ... are you going to take them to be settled by people who have no standing in the Church? Shame on you! Surely there is at least one wise person in your fellowship who can settle a dispute between fellow-Christians" (cf. ICor. 6:1-7).

The Acts of the Apostles, while narrating the trial procedures of St. Paul gives us a picture of the process that the Roman Court followed.

When he was judged to be beaten up, standing before the court St. Paul asked the tribunal personnel, the following question as described in the Acts: "But when they had tied him up with the thongs, Paul said to the centurion who was standing by, "Is it lawful for you to scourge a man who is a Roman citizen, and uncondemned?" These words of St. Paul and the events that followed disclose that there was a court procedure and that St. Paul was well versed in the procedures that were to be followed in the process of judging someone (Acts 22:25-26).

The codes of canon law of the Catholic Church are no exception to this fact. Not only that the codes provide for processes, but also the very promulgated codes were end products of a long and rigorous codification process involving varied procedures. This is the 30th year of the promulgation of the CCEO and CIC completes 37 years of its coming into vigour. In short CIC that was promulgated in 1983 and CCEO that got the force of law in 1990 tell the story of the interplay of multiple process and procedures that preceded their final formulation, redaction and promulgation.

"Salus animarum suprema lex est": Church is a community of weak, fragile and sinful human beings saved by the redemptive sacrifice of their Lord and Master Jesus Christ, the incarnated, the crucified, the resurrected and the glorified. Though the Word of God, Holy Scripture, provides the fundamental rules and parameters for the life of a Christian faithful, he is prone to succumb, due to the above-mentioned human nature, to manifold temptations with which the world attracts him. Therefore, based on the commandments of the Lord and the rules of life, that is, love of God and love of neighbour in the Scriptures, Church offers doctrines, dogmas and various other precepts for the pilgrims on earth, facilitating them to live the Scriptural Teachings meaningfully and effectively. The fact, however, that there are these commandments and human as well as divine laws, both natural and positive, does not mean that all follow them.

Hence, guided by these fundamental commandments of love in its vertical and horizontal dimensions, the Church has been developing or improving from time to time, in tune with the advancement in the scientific, technological, theological and ecclesiological spheres, that is, reading the signs of the times and the exigencies of the society, legal systems comprising of various processes aimed at accomplishing what is established in the last canon of CIC, *"salus animarum suprema lex est"* (c. 1752). Thus the Supreme Legislator of the Church motivates, prompts and sometimes even binds the members of the Church who are called to imitate the perfection of the Heavenly Father (Mt. 5:48) by

enacting common or universal laws, meant to govern the entire life and activities of the universal Church. It is by introducing different and various processes and employing procedures inherent therein that Church applies the above-mentioned values in the concrete life situation of the faithful, sometimes even with penal sanctions, especially 'medicinal punishments', which is one of the characteristic features of the Eastern tradition reflected in the oriental code.

Jesus came to establish and spread the Kingdom of God. Church's mission is nothing but an extension of the mission of Christ. He called the disciples, gave the power to bind and loose (Mt. 16:19) and commissioned them to go and proclaim the Word of God and thus to continue the work of redemption (Mt. 28:19-20). This apostolic tradition of participating in and continuing the mission of Christ, the Head, is being continued in the Church through the ordained ministers by their sharing in the ministerial priesthood of Christ, the high priest and the lay faithful by virtue of their partaking in the common priesthood of Christ. CCEO c. 323 states that, "Clerics ... are deputed to be ministers of the Church, participating in the mission and power of Christ the Pastor." Church also empowers the faithful to engage in the mission of the Church by providing legal backing. CCEO invites the lay people, thus, to join "each according to his or her condition, to exercise the mission which God has entrusted to the Church to fulfil in the world" (CCEO c. 7; CIC c. 224). Referring to their role or duty the code stipulates that the lay people are "to cooperate in the building up of the Body of Christ" (c. 11) and to strive "to lead a holy life and to promote the growth of the Church and its continual sanctification" (CCEO cc. 11 & 13). Thus canon law contributes towards the mission of the Church by providing legal footing adhering to the Scriptural teaching, for the "building up of the Body of Christ" and "its continual sanctification."

Administration of Justice is one of the missions of the Church and hence it is given due importance and ample space in the codes of canon law. Justice demands that each member of a society or community is ensured his or her due and the juridical life of a society requires that the rights of each and the good of the community are well taken care of and respected. So also Church is duty bound to stay by and protect certain values like truth, justice, fidelity etc. Whenever and wherever it fails, the ecclesial tribunals and civil courts respectively employ their legal systems to defend everyone's right, to mete out justice to all and to ensure the public good. Process and

procedural norms are an important part of such legislations, in the Church.

It is good, here, to see what these processes and procedures, enshrined in the Church legislation, are. According to a general definition process is “a series of actions or steps taken in order to achieve a particular end” (*The New Oxford Dictionary of English*, 1998, s.v. “Process”). The new commentary on the CIC defines process as follows: “A process (*processus*) is a complex of acts or solemnities, prescribed by law and to be observed by public authority, for solving questions or settling business” (John P. Beal, James A. Coriden and Thomas J. Green, eds., *A New Commentary on the Code of Canon Law, Study Edition*, 1612-13)

Vatican Council II has emphasized the reality of the Church in its two dimensions, that is, earthly and heavenly, spiritual and material or visible and invisible (LG 8). As a spiritual reality she has, obviously, as its principal objective, to cater to the spiritual welfare of its members. Hence, various sections of the codes of canon law envisage different functions and actions to take place in a logically sequential order, as part of its process, in order to achieve the aforementioned goal. Thus process could be considered as the general/broader design or series of actions the legislator deliberately enacts to accomplish some determined end results.

As an inherent part of a process, procedures could be understood as further details and definitions or specifications envisaged by law to ensure better and timely accomplishment of the objectives of a process. According to the New Commentary on CIC “A procedure (*procedura*) is simply a way of proceeding (*modus procedendi*); it can be either judicial or extrajudicial” (*A New Commentary*, 1612-13). Another general definition holds procedure as “an established or official way of doing something”; “a series of actions conducted in a certain order or manner” (*The New Oxford Dictionary of English*, s.v. “procedure”). If the goal of a process requires different steps or a set of actions or functions to be performed, in order to achieve a specific task, the procedure will further define it in detail, for example, who does what, when, how and in what order each of these functions could be better executed or coordinated and so on.

The afore-cited fact of spiritual welfare emphasized by CIC c. 1752 does not mean that Church is ignorant and disinterested or unaware of the terrestrial realities of the faithful, that is, trials and tribulations, conflicts and complexities, discords and disharmonies that might arise

among the faithful or even among the Church's ministers including the hierarchy. St. Paul admits this fact, as indicated earlier, when he addresses the faithful of Corinth inviting them, in case disputes arise among them, to settle the issues within the community itself resorting to a wise person in their own fellowship, without going to an outsider (1Cor. 6:1-8). The reforms of the procedural norms that the legislator carefully enacts, envisages and amends from time to time, declare that Church is concerned about the earthly, visible and material aspect of human life and the integral welfare of the faithful. Thus we notice that a major portion of the code, for example, Book VII of CIC dedicates 352 canons to deal with such processes aimed at solving issues, protecting values, and defending rights of the aggrieved parties in a conflict situation or for imposing punishments. CCEO also dedicates several titles and sections to cover the matter under discussion.

While treating the special process envisaged in the code (CIC) on marriage nullity cases, A. Cox says that Church's procedural laws are to be understood and implemented in light of the following fundamental values:

The procedures governing these cases are a means employed by the Church to serve its mission. In particular, the procedural law governing marriage nullity processes was designed to foster and to protect critically important values such as fidelity to truth, the protection of the rights and the spiritual welfare of persons, the Church's witness to the sacredness of marriage, canonical equity and the Church's common good (Crag A. Cox, "Certain Special Process," in *A New Commentary*, 1760-61).

The procedure for trials in general is seen in CIC cc. 1400-1500 and CCEO cc. 1055-1184 and the Contentious trials are presented in CIC cc. 1501-1655 and CCEO cc. 1185-1356. As is clear the codes provide for, besides the general norms, some special processes where the general procedural norms are applied with needed and permissible adaptations, especially for administering justice properly. As the Church's objective is the integral welfare of the faithful, even when she is constrained to take punitive measures, in view of the good of the persons, she insists on applying the principle of equity and charity. While CCEO cc. 1357-1400 deal with certain special processes cc. 1468-1487 treat the procedural laws regarding the imposition of penalties.

Processes and procedures combined together, thus, serve the realization of a preferred end, that is, settlement of issues, protection of rights and values, meting out justice to an aggrieved person and the

like, either through a judicial or through an administrative process, in the Church legal system.

Reflections of the Christian way of settling issues, practiced by the early Christians and found in the apostolic tradition are seen in the codes. The CCEO provides, for example, ways and means for out-of-court settlement of issues, in order to avoid trials (cc. 1164-1167) and arbitration (cc. 1168-1184). The CIC also stipulates for special process for Marriage (cc. 1671-1707); for the separation of the spouses (cc. 1708-1712); for avoiding trials (cc. 1713-1716); and for the imposition of ecclesiastical penalties (cc. 1717-1731).

Church venerates holy men and women, that is, martyrs who embraced martyrdom for the sake of faith in Jesus Christ, confessors who lived a holy life by practising the virtues to a heroic degree and those who make heroic offer of life for the sake of others. They are declared blessed or saints at the end of a very long, complex and rigorous process. In 1983 Pope John Paul II renewed the canonization process comprising of two phases, and the procedures in detail could be found in the "Norms to be followed by the Bishops in Instructing a Cause." So the procedural norms of the process of canonization defines or describes the competence, that is, who or which diocese/eparchy is to instruct a cause, what is the subject matter or the ground, who are the tribunal personnel, who should do what, which should take place at the two different phases of the same process and so on and so forth. Though process and procedures cannot be perceived as two totally independent watertight compartments, but a combination, here we may notice some subtle differences between what process and procedures are.

The current volume of *Iustitia*, Dharmaram Journal of Canon Law which is completing 10 years since its commencement, itself is the materialization of a long deliberation and process, but, of course, of a different kind, private and unofficial in nature. Both the two numbers of this decennial volume discuss some of the processes and the inherent procedures envisaged in the codes of canon law, especially in CCEO.

Varghese Palathingal in his article, "Court Procedure in the Eastern Churches Seventy Years after the Promulgation of *Sollicitudinem Nostram*" while tracing the evolution of the procedural law in the Eastern legal system, evaluates *Sollicitudinem Nostram* as having placed a strong foundation and influenced the revision process of the procedural norms in CCEO. In the administration of justice and

protection of the rights of the faithful, these procedural norms do play a key role. The author also argues that the rightful autonomy of the Churches *sui iuris* should be respected in this regard.

In the light of some of the recent reforms and with reference to CCEO cc. 1, 193 §1 and 383 §2 Jobe Abbas' article "The Eastern Code Turns Thirty: Findings its Place in the One *Corpus Iuris Canonici*," examines thoroughly two Eastern norms (cc. 678 §1 and 1102 §1) and their possible application to the Latin Church and states that it is still to define properly the relationship the Eastern Code has with the Latin Code and *Pastor Bonus*. The author asks, "Why should all bishops not be obliged in the same way and to the same degree regarding faithful entrusted to them from another Church *sui iuris*? By the nature of the matter, the stated obligation of a bishop in both Codes is certainly serious" (see, p. 53 below). The author welcomes the clarity that the new document, *De Concordia inter Codices* succeeded to bring about in this regard. He still looks forward to getting definitive clarity from Holy See on the possibility of appeals from patriarchal tribunals to the Roman Rota and the inter-connection between CCEO c. 1063 §3 and PB art. 128.

In the background of many consecrated who either wish to leave religious life on their own due to vocation crisis or whom the superiors are forced to dismiss on account of the scandalous living and unbecoming behaviours of such members, Alisha Paul's article "Dismissal Procedure in Religious Institutes: A Comparison between CIC and CCEO" discusses the procedural norms on the dismissal of religious. This article is an attempt to clear the confusion and lack of clarity that the superiors confront regarding the procedural norms, that is extra-judicial or administrative in nature and their application in concrete circumstances.

Domy Thomas' article "*Vos estis lux mundi*: Text and Commentary" of the Apostolic Letter *Vos estis lux mundi*, of Pope Francis dated 7 May 2019, considers each article of the document giving it the possible strict interpretation in the numerical order of the document. Having dealt with the general provisions in the document and their commentary in the Part I (see, *Isutitia* Vol. 10, n. 2) this Part II of the same article, treats Title II of the document discussing the procedures to be followed by cardinals, patriarchs, bishops and legates of the Roman Pontiff in handling "delicts against the sixth commandment of the Decalogue" committed by clerics or religious.

Biju Perumayan makes a critical examination of the present system of handling the *Delicta graviora* in his article "From Reservation to Vigilance: A Possible Step in Dealing with the Delicta Graviora." Considering the three-tiered hierarchical structure of the Eastern Catholic Churches, the author suggests that though both reservation to Holy See and vigilance causes restrictions to the autonomy of the lower authorities, employing the patriarchal *ius vigilantiae* of CCEO c. 89 §1 would be preferable to the system of reservation. He, then, enumerates some of the most important advantages that *ius vigilantiae* has over reservation. The former respects Eastern canonical tradition and the competence of the Eastern patriarchal authority. Moreover, the proximity with the concrete cases, is an important advantage.