

DISMISSAL PROCEDURE IN RELIGIOUS INSTITUTES: A COMPARISON BETWEEN CIC AND CCEO

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Articles on the dismissal of religious are numerous and therefore the procedure of dismissal is not a new theme for us. However, many superiors as well as the personnel who are responsible to carry out this task are left with very many doubts in relation to the procedure that is to be observed in dismissing religious and therefore, stand in need of clarity. This article is an attempt to see the dismissal procedure from the viewpoint of administrative procedure. It brings to light in detail the procedure of dismissal which is extra-judicial or administrative in nature. At the same time, it highlights the ways in which the rights of the religious as well as the common good are safeguarded, which is the ultimate aim of the disciplinary procedures in the Church.

Introduction

The Church has very many structures within itself, which help its members to attain the ultimate purpose of their existence, the *salus animarum*, (CCEO c. 1397/CIC c. 1748). One among those structures is religious institute which spreads the good news of Christ through the witnessing life of its members. This life obligates the followers to be radically rooted in faith and filled with the love of God and

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neighbour,¹ which consists of enthusiasm with dedication and perpetuity with commitment.² Although they are called to live a holy life, at times by being succumbed to their weaknesses, they violate the discipline of the religious life, which brings disturbance and scandal within the Church and in the religious institute. Understanding these potential circumstances, that is, they may fail to follow the regulations in the process of achieving its purpose, the Church has provided various disciplinary measures as it has the responsibility to correct those violations and be the strong defender for the protection of human rights (CCEO c. 26 § 2/CIC c. 223 § 2).³

Consequently, the Church has implemented procedural laws into its legislative system in order to ensure the rights in disciplinary measures. These laws are intended to reform the offender, repair the scandal, restore justice and thereby protect the integrity of the Church and work for the salvation of souls. These procedures consist of different methods to find out the facts and to determine the truth of the facts with justice and equity.⁴ This is evident through the words of Pope Francis as he says that the aim of all procedures in the Church is the protection of human rights and thereby all the conflicts are to be resolved with the merciful love of God.⁵

Though the Church holds today meticulous procedures to correct the members, we understand that it was a gradual and consistent development. In this pursuit, the Scriptures are the first sources which show forth what and how the punishments are to be applied (Dt. 19:15, Mt. 18: 5-9, 15-20, Mk. 9: 42, 1 Cor. 5). The Gospel of Mathew outlines the real procedure to correct an offender, saying that, "if a member of the Church does something wrong, correct the member when the two of you are alone; if the member does not listen, take one or two other witnesses to correct the person and again if the member refuses to repent, then report it to the community and still if

¹ PC, n. 25

² *Vita Consecrata*, n. 2.

³ Sahayaraj Lourdasamy, "Justice and Mercy-A Canonical Perspective," *Studies in Church Law*, 11 (2016), 125.

⁴ Thomas J. Green, "The Future of Penal Law in the Church," in James A. Coriden, eds., *The Code of Canon Law: A Text and Commentary*, 212.

⁵ Pope Francis, *Misericordia et Misera*, Apostolic Letter, 20 November, 2016, n. 1, https://.vatican.va/content/francesco/en/apost_letters/document_s/papa-francesco-lettera-ap_20161120_misericordia-et-misera.html accessed on 20 November 2016.

the member refuses to amend one's ways, then let such one be as a gentile to you" (Mt. 18: 15-17).

At the same time, the contribution of the historical factors for the development of disciplinary measures is enormous. Here, no one can ignore the monastic structure, which provided significantly for the formation of disciplinary procedures in relation to the incorrigible religious. For example, the rule of St. Pachomius states that the offender is corrected with warnings and if the member was incorrigible after the warnings and punishments, then the member is separated from the community. Similarly St. Basil attributed a procedure in his rule to correct the violations, such as: the offender is admonished repeatedly and if remains incorrigible, then he has to be expelled from the community. The term "expel" means "drive out of"⁶ and there were two types of expulsions according to the monastic rules: those who are discharged permanently and those who are discharged temporarily. Like the prescriptions of the Eastern monastic rules, the first Western rules also provided this expulsion to the incorrigible members as a last resort. In the rule of St. Augustine, we could see an insistence on applying expulsion as the last punishment upon the incorrigible member after private and public warnings in the presence of witnesses and with corporal punishments. St. Benedict provided a detailed procedure for correcting a member such as private warnings once or twice by seniors, public warning by superiors, excommunication⁷ and with corporal punishments. If the persistence continues even after the execution of all these measures, the member is expelled from the community. This expulsion is only a separation from the community for an indefinite period and the member can return after the period of penance, but this chance was provided only three times and after that the expulsion is definitive as the member is forbidden to return to the monastery.

Later the term "dismissal" was introduced through the Constitution of Leo XIII, *Conditae a Christo*, published in 1900 and it was used for the separation of members who are in simple vows.⁸ In 1911, through the Decree *Quum Singulae*, a procedure was introduced for dismissal.⁹ The

⁶ Philip Babcock Gove and others, eds., *Webster's Third New International Dictionary* (USA: Merriam Webster co. 1976), 799.

⁷ 'Excommunication' here it means exclusion from the meal and the choir of the monastery.

⁸ Leo XIII, *Conditae a Christo*, Apostolic Constitution, *EVC*, 451-459.

⁹ Sacred Congregation for Religious, *Quum Singulae*, *ME* 23 (1911), 156-159.

word “dismissal” comes from the Latin word *dimittere*¹⁰ meaning send away. According to F. J. Egaña, ‘dismissal’ means “the definitive separation from the religious institute as a penalty, which is carried out at the initiative of the competent ecclesiastical authority, against the will of the religious.”¹¹ The effect of the dismissal is the permanent departure of the member from the institute, which results in returning to secular life.¹² The fundamental aims of the dismissal as described are, *garantire la disciplina, recuperare il religioso, garantire i diritti del religioso and assicurare il bene della comunità*.¹³ More clearly to guarantee the discipline, to retrieve the religious who have committed the violations against the discipline, to guarantee the rights of the religious in the dismissal process and to ensure the good of the community, to avoid the scandal, to re-establish justice and to help the religious to return to the right path. This disciplinary procedure is applied on religious for the external and imputable violations (CIC 1917 c. 2195) which are against the Church and against the religious life. The external violations are punishable actions, such as ‘external violation which is not known by anyone (occult),’ ‘external violation which is known by the community (public)’ and ‘external violation which is known only by a few (potentially public).’¹⁴ External violations are punishable actions, only when the person is imputable for the action. Imputable means, “The person is responsible for the act because of some degree of knowledge and choice.”¹⁵ There are two types of imputability - moral imputability and juridical imputability. When the person is responsible to give answer to God for the violation, that is moral imputability and if the person is responsible to give answer to God and to the Church for the violation, that is juridical imputability. The violation with moral imputability is called sin and that is cured through confession and the violation with juridical imputability is

¹⁰ *di+mitto-* with *di* meaning “apart, away” and *mitto* or *mittere* meaning “throw, send, let go.”

¹¹ F. J. Egaña, “Dimissione,” in C. Salvador and others, eds., *Nuovo Dizionario Diritto Canonico*, 345.

¹² Dimitrios Salachas, “La Vita Monastica e Religiosa nel Codex Canonum Ecclesiarum Orientalium,” in *Euntes Docete*, XLVIII (1995), 127-128.

¹³ Velasio De Paolis, *La Vita Consacrata nella Chiesa*, 575; D. G. Astigueta, “La Pena come Sanzione,” *Periodica*, 101 (2012), 526.

¹⁴ Ángel Marzoa, “Offences and Punishments in General,” in Ángel Marzoa, Jorge Miras and Rafael Rodriguez, eds., *Exegetical Commentary on the Code of Canon Law*, vol. 2 (Canada: Wilson and Lafleur, 2004), 257-269.

¹⁵ Elizabeth McDonough, “Mandatory Dismissal,” *Review for Religious*, 61 (2002), 650.

punished in external forum according to the legislation of the Church.¹⁶ However, if all the preliminary methods fail, only then as a last resort, the persons are punished with expulsion and dismissal.

Basing on all the above developments, both former legislations of the Church (CICO/CIC 1917) enacted norms for dismissal and expulsion. Both Codes used the term "dismissal" for the separation of the members even in solemn or simple profession and the term "expulsion" is used for temporary separation of the members that was given in urgent cases. However, the procedures are different depending on the persons in question, such as temporarily or perpetually professed men or women, those who are in clerical exemption or clerically non-exempt. Though there were different kinds of dismissals, both former Codes lacked a detailed juridical procedure to be followed for the dismissal.¹⁷ Therefore, it was the need of the Church legislation to prescribe a detailed procedure for dismissal.

Keeping in mind the intention of the Church, that is, to settle the controversies within the Church itself through amicable settlement or by mutual consultation, both CIC 1983 and CCEO established different kinds of dismissal namely *Ipso iure/ipso facto* dismissal, facultative dismissal and mandatory dismissal. These are administrative in nature,¹⁸ and the administrative procedure is a way of imposing a canonical penalty through an administrative decree by the authority. In comparison to the judicial process, the administrative procedure is very simple and takes lesser time in order to arrive at the decision. Consequently, as part of this procedure, both Codes provide more power to the Major Superiors to perform this juridical act by verifying the delicts and issuing the decree of dismissal by following a procedure considering the rights of all concerned.

1. Dismissal - Procedure in CCEO and in CIC 1983

Dismissal is a juridic act, taken by a competent authority to separate a professed member permanently from the religious institute through an extra-judicial decree. Considering the general provisions of the canonical legislation, this juridic act must be valid when it is administered by the competent superior according to the norms (CCEO cc. 931-935/CIC cc. 124-127). It must not be placed out of force,

¹⁶ Àngel Marzoa, "Offences and Punishments in General," vol. 2, 265.

¹⁷ Francis G. Morrissey, "The Dismissal of Members," in *Exegetical Commentary on the Code of Canon Law*, vol. 2, 1861.

¹⁸ Kevin Matthews, "Extra-judicial Appeal and Hierarchical Recourse," *Studia Canonica*, 18 (1984), 118.

out of grave fear, out of deceit and out of ignorance or error. At the same time, as procedure is always intended to protect the rights of both the individual and the institutes, it must be interpreted strictly according to CCEO c. 1500/CIC c. 18 as it is terminating the membership permanently from the religious institute.

In CCEO there are three types of dismissal procedures and they are applicable to all religious. They are: Dismissal by the law itself, namely *Ipso iure* dismissal (CCEO c. 497), Expulsion in urgent cases (CCEO cc. 498, 551), and Facultative dismissal (CCEO cc. 499-501, 552). In CIC, there are four types of dismissal and they are: Automatic dismissal, namely *ipso facto* dismissal (CIC c. 694), Mandatory or compulsory dismissal (CIC c. 695), Facultative dismissal (CIC c. 696), and Expulsion (CIC c.703).

2. Administrative Procedure of Dismissal

Both new Codes use a unified and simple procedure for the dismissal even if it is for a member of temporarily or perpetually professed, men or women, Pontifical, Patriarchal or Diocesan right, in solemn vows or simple vows. It is extra-judicial or administrative in nature. However, both Codes use different terms such as “administrative procedure” or “extra-judicial procedure.” The term “administrative procedure” is used since this procedure imposes penalties through an administrative decree and it is an administrative act (CIC cc. 48, 1732). The term “extra-judicial procedure” is used since it is placed extra-judicially and imposes punishment through an extra-judicial decree (CCEO cc. 1520 § 2, 996/CIC cc. 48, 1732).

Administrative procedure is good for the dismissal because as we said, it is simple and fast.¹⁹ Moreover, it becomes very helpful as in many cases, the punished religious would like to get the dismissal as early as possible. However, according to the opinions of some commentators, extra-judicial procedure has some possible limitations. Firstly, as we mentioned before, it is a procedure conducted by an authority who has an executive power with the consent or consultation of an assisting group. Consequently, there are chances to make arbitrary solutions for the issues. As a result, in some cases there may be the possibility for the religious to be misunderstood by the superiors if they have some prejudiced opinions and the members may question the goodwill of the superiors. Secondly as it is a simplified and rapid procedure, there

¹⁹ Frederick C. Easton, “The Development of CIC canon 1342 §1,” *Studia Canonica*, 48 (2014), 136.

are chances for the superiors to complete the procedure without proper evidence, certainty about the imputability of the accused and violating the justice of the parties, if they are not serious.²⁰ Thirdly, there are chances to avoid the right and justice for the members because of the lack of knowledge and rudeness of the superiors. Considering these limitations, those who are dealing with this procedure should genuinely and meticulously carry out the extra-judicial procedure and the rights that are to be protected for the completion of the procedure, as this would ensure justice.

2.1. Conditions for Issuing an Administrative Decree

In the procedure of issuing an extra-judicial decree the Church adopts certain conditions. The conditions for applying the procedure are 1) the existence of grave reason or just reason²¹ and 2) the certainty of proofs (CCEO c. 1402 § 2/CIC c. 1342). These conditions indicate the right of the person to maintain a good reputation and privacy (CCEO c. 23/CIC c. 220). It means, if the violation is grave and the superior is certain about the proofs, then only does he/she consider about this procedure. Otherwise, the superiors would risk damaging the reputation of the members.

2.2. Procedural Requirements for Issuing Administrative Decree

Both Codes mention some procedural requirements in this regard. According to the Eastern Code, these procedural requirements are observed for the validity of the procedure, while the Latin Code is not explicit in this regard.

1. The Right of Defence (CCEO c. 1486 § 1, 1^o/CIC c. 1720, 1^o): This indicates the right of the member to know the reasons or accusations in order that the accused can make self-defence. The Eastern Code mentions that the accused should be given the opportunity of 'fully' exercising the right of self-defence. Here, this term '*plene*' is used because it is also obligatory for the authority to permit the accused to have the help of an advocate, if it is so desired by the accused.²² This

²⁰ Thomas J. Green, "On the Manner of Procedure in Administrative Recourse and the Removal and Transfer of Pastors," in James A. Coriden and others, eds., *The Code of Canon Law: A Text and Commentary*, 1029.

²¹ To apply the extra-judicial procedure, the Latin Code requires only a just cause - the cause which is required. In the case of Eastern Code, it requires grave causes (CCEO c. 1402 §2/CIC c. 1342 §1).

²² James M. Pampara, *The Specific Characteristics of the Penal Law and the Penal Procedure in the Code of Canons of the Eastern Churches* (Rome: Excerpta

term 'plene' is absent in the Latin Code. According to William Woestman, those who proceed with the administrative recourse to the Holy See have the right to have the assistance of an advocate and the service of the procurator. Therefore, according to him, the same right exists whenever there is the question of imposing an administrative decree.²³

2. The Oral Discussion (CCEO c. 1486 § 1, 2°): This norm indicates the right of the religious to communicate with the competent Superior directly to express the arguments and at the same time it consists of the right of the accused to get warnings from the Superior (CCEO cc. 23, 1422, 1113, 1406/CIC cc. 220, 698, 1361 § 3, 1455, 1319).

2.3. Procedure for Issuing Administrative Decree

Before issuing extra-judicial decrees, it is necessary for Superiors to understand the procedure for issuing extra-judicial decrees. The competent Superior who wants to issue a decree should collect all the informations and proofs related with the violations (CCEO c. 1517/CIC c. 50). This includes the documents, the presumptions, the testimonies and the witnesses which can prove the imputability of the offender. The canonical legislation provides the norms for collecting the proofs in CCEO cc. 1207-1266/CIC cc. 1526-1573.

1. Declaration of the parties (CCEO cc. 1211-1219/CIC cc. 1530-1538): The declaration of the offended person is very important to know the truth more effectively.

2. Documents (CCEO cc. 1220-1227/CIC cc. 1539-1546): These documents include public documents and private documents. Public documents include both public ecclesiastical documents and public civil documents. Public ecclesiastical documents are those which an official person has drawn up in the exercise of his or her function in the Church. Public civil documents are those which have been drawn up in the exercise of functions in government offices or in civil law. Private documents refer to all those documents which are not included in public documents. To collect documents means to find out all written or recorded materials that are helpful to prove the case.²⁴ If the

ex *Dissertatione ad Doctoratum*, Pontificium Institutum Orientale, Facultas Iuris Canonici Orientalis, 2009), 30.

²³ William H. Woestman, *Ecclesiastical Sanctions and the Penal Process* (Bangalore: Theological Publications in India, 2009), 164.

²⁴ Gerard Sheehy and others, eds., *The Canon Law Letter and Spirit* (London: Geoffrey Chapman, 1995), 879.

documents are original or authentic (attested) copies, they have more force to prove the case (CCEO c. 1225/CIC c. 1544). Therefore, if possible the competent authority should try to find out the original documents for the case.

3. Witnesses and testimonies (CCEO cc. 1228-1262/CIC cc. 1547-1581): The testimony is given by those who have knowledge about the facts. The members of the community know more about the facts and about the offended person; therefore, it is good to collect their testimonies to know the truth.²⁵

4. Judicial examination and inspection (CCEO cc. 1263-1264/CIC cc. 1582-1583): To find out the proof, it is opportune to visit the relevant places or inspect the things, if any (CCEO c. 1263/CIC c. 1582). When the visit or inspection has been completed, a report about it must be drafted (CCEO c. 1264/CIC c. 1583).

5. Presumptions (CCEO cc. 1265-1266/CIC cc. 1584-1586): The competent authority can formulate presumptions of the fact which are not established by law itself as long as they arise from a certain and determined fact which is directly connected with the subject matter of the controversy.

After collecting all proofs, if the competent Superior is certain about the facts and the imputability of the offender, then he/she has to disclose it without danger of public or private harm to the offender (CCEO c. 23/CIC c. 220).²⁶ The superiors must disclose the proofs, keeping in mind the right of the accused for good reputation, privacy and confidentiality. Therefore the superiors must be careful when the proofs are disclosed. The Eastern Code mentions sixty days as the maximum time limit within which a decree must be issued by the competent authority. It also gives provision for the particular law to decide the time limit according to their own *sui iuris* Church (CCEO c. 1518). The corresponding canon in the Latin Code has some differences, such as 90 days instead of 60 days (CIC c. 57). Both Codes indicate that if any authority fails to act within the prescribed time or inflicts damage upon someone by a juridic act by fraud or negligence is obliged to repair the damage inflicted on the offender (CCEO c. 935/CIC c. 128). The competent authority should be aware that the use

²⁵ Giuseppe Lobina, "La Separazione dei Religiosi dall'Istituto," *Apollinaris*, 56 (1983), 115-146, 134.

²⁶ Zenon Grocholewski, "The Procedure for Imposing Penalties," in George Nedungatt, ed., *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, *Kanonika* 10(2002), 835.

of power is for the salvation of souls and for the public welfare. Therefore, the procedure must be used considering the laws and legitimate customs with justice and equity (CCEO c. 1519).

At the end, the accused has the right to be communicated about the decision or the decree, otherwise the decree has no legal force. A decree takes effect or legal force when it is communicated or intimated to the member even if it has been refused by the person to receive or hear the decree or refused to sign the written record of the proceedings (CCEO c. 1520/CIC cc. 54, 55, 56).²⁷ After issuing or declaring the decree when it is informed to the accused, then only the action is considered complete. The canon mentions about the manner of intimation, such as the text of the decree being given in writing. If there is danger of public or private harm, the superior can intimate it orally. It means, the superior must read the decree to the person with the presence of two witnesses or a notary and the proceeding must be recorded and signed by all those present. Even if the accused is not ready to accept it, other members should sign it and mention the non-acceptance from the part of the accused. Then the action is considered completed (CCEO c. 1520 § 2).²⁸ This oral intimation can be applied, if the superior is sure about the member's non-acceptance of the decree through writing. If it is expressed by writing, then the decree should be sent by an authorised mail, which will enable the superior to receive the proof for acceptance. CCEO c. 1520 § 3 indicates about the procedure to be followed if the accused refuses to accept the intimation. If the person refuses to accept the communication by not receiving or hearing the decree and refuses without a just cause, the decree is to be considered duly communicated.

Conclusively, the above-mentioned norms, the means, the conditions, the requirements and the procedures point toward the rights that are promised by extra-judicial procedure or administrative procedure. In short, they are:

1. The right for good reputation, privacy and confidentiality (CCEO cc. 23, 1402 § 2/ CIC cc. 220, 1342, 1361, 1455).
2. The right to know about the reason and proofs (CCEO c. 1517/CIC c. 50).

²⁷ Victor J. Pospishil, *Eastern Catholic Church Law Commentary* (Kottayam: Oriental Institute of Religious Studies in India, 1994), 657.

²⁸ Zenon Grocholewski, "The Procedure for Imposing Penalties," *Kanonika*, 10, 836.

3. The right for self-defence (CCEO c. 1486 § 1, 1°/CIC c. 1720, 1°).
4. The right to communicate directly with the higher authority and the right to get warnings (CCEO c. 1486 § 1, 2°/CIC c. 698).
5. The right to know the reason in law and in fact which is mentioned in the decree and to make recourse to the higher authority (CCEO c. 1486 § 1, 3°/CIC c. 1720, 3°).
6. The right to have an advocate to defend his/her opinion (CCEO c. 1486 § 1, 1°).
7. The right to be observed with a procedure which applies the law with justice and equity (CCEO c. 1519 § 2/CIC c. 51).
8. The right to be intimated the declared decree (CCEO c. 1520/CIC cc. 51, 54, 55, 56).
9. The right to get proper time for self-defence, to make recourse and to get response for the recourse (CCEO c. 1518/CIC c. 57).
10. The right to repair the damage caused by the delay of the procedure, by fraud or negligence from the part of the Superiors (CCEO c. 935/CIC c. 128).

When we mention about the rights it is important to be aware that in the dismissal procedure, the accused does not have any right to claim anything from the religious institute for the service one has done. However, the competent authority has the obligation to give for the service, considering the equity and charity.

3. Similarities between both Codes with Regard to Dismissal

Both Codes formulated same dismissal procedure for religious institutes (monastery, order, congregations) with minor differences. It can be understood from the similarities and dissimilarities between both Codes in the area of the dismissal.

The similarities are:

1. Generally the present Codes provide significant importance for the rights and obligations of every faithful. With regard to the religious, apart from the rights and obligations which they inherit through their baptism, they possess in addition from their own religious institutes through their profession of vows (CCEO c. 7/CIC cc. 96, 662-672).²⁹ As a result, it is one of their rights to be judged according to the provision

²⁹ Augustine Mendonça, "Promotion and Protection of Rights in the Church," *Philippine Canonical Forum*, 11 (2000), 31-59, 49.

of the law and to be applied a procedure considering the equity and justice (CCEO c. 24 § 2/CIC c. 221 § 2).

2. Both Codes provide *ipso iure/ipso facto* dismissal (CCEO c. 497/CIC c. 694) and the causes for the dismissal are, abandoning the Catholic faith and celebrated or attempted marriage, even only civilly. The new cause, that is, illegitimate absence from the religious house for 12 consecutive months, added to this section by the Motu proprio *Communis vita*,³⁰ binds only the religious who belong to the Latin Church as it does not refer anything in relation to CCEO and the modifications have not been made in relation to the Oriental Churches. As a matter of fact, *ipso iure/ipso facto* dismissal does not require any formal procedure but before it comes into legal effect, the superior must follow a procedure, which is administrative in nature. These causes and procedure are applicable for the temporarily and perpetually professed member.

The procedure is as follows: The competent authority collects the proofs (the documents, the testimonies of the witness and the declaration of the concerned religious) and verifies the gravity of the violation. Then the competent superior informs the member. If the proofs are certain, the Major Superior consults with the council and declares the fact in order to certify the dismissal juridically and informs the member considering the right for recourse. Both Codes provide the provision to the particular law/proper law to decide who can declare the fact among the Major Superiors (Superior General or Provincial Superior).

3. A religious can be expelled from a religious institute if there is an imminent and most grave external scandal or harm to the religious institute (CCEO cc. 498, 551/CIC c. 703). After imposing expulsion, if the imputability of the accused is proved, then the Superior has to continue with the dismissal procedure. If it is not proved, then the member has to be taken back to the institute. Both Codes give the provision to the Major Superior or even to the local Superior to expel the member.

4. There is a facultative dismissal for temporarily and perpetually professed members which is the same in both Codes. The causes for the temporarily professed members are grave, external and imputable. It can be due to the absence of religious spirit which becomes scandal

³⁰ Francis, *Communis vita*, Motu Proprio, 19 March 2019, *L'Osservatore Romano* (29 March 2019), 5.

for others (CCEO c. 552/CIC c. 696). In the case of perpetually professed members, the causes must be grave, external, imputable and juridically proven (CCEO c. 500/CIC c. 699). Both Codes provide the provision to the particular law/proper law to decide the causes for this dismissal. The procedure for facultative dismissal is same in both Codes for the temporarily or perpetually professed members. The procedure is as follows: The competent authority begins the procedure, collects and completes the proofs, issues two warnings within the prescribed time limit, provides the possibility for self-defence after each warnings, consults with the council, sends the acts to the Superior General/Supreme Moderator to issue the decree of dismissal; Superior General/Supreme Moderator, with the consent of the council, issues the decree of dismissal, sends all the acts to the ecclesiastical authority for confirmation, notifies the confirmation of the decree to the member and informs the possibility for the member to make recourse within the prescribed time.

5. In CIC there is yet another kind of dismissal, namely mandatory. Though CCEO does not mention this directly with the name 'mandatory' its c. 500 provides this provision in some instances. It indicates that if the nature of the violations precludes the warnings, then the Superior can proceed with the procedure without canonical warnings and the causes for this procedure would be determined by the *typicon* of the monastery or the statutes of the order or congregation. The procedure for mandatory dismissal is as follows: The competent authority begins the procedure, collects and completes the proofs, informs the member and provides the possibility for self-defence, sends the acts to the Superior General/Supreme Moderator and with the council issues the decree of dismissal.

6. Both Codes provide the possibility for higher recourse for the offender in all the dismissal procedures, if they feel their rights are not protected. The recourse has suspensive effect and the accused member is still considered as part of the religious institute. The authority who confirmed the decree is competent to receive the recourse and if the member (who is getting dismissed) is not satisfied with the decision of the confirming authority, he can, according to CCEO, make recourse within 30 days, to the higher authorities, that is, the Eparchial Bishop, Patriarch/Major Archbishop, the Congregation for Oriental Churches and the *Apostolic Signatura* respectively and according to CIC, to the Diocesan Bishop, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life and *Apostolic Signatura* respectively.

4. Dissimilarities between CIC and CCEO in Dismissal Procedure

Like similarities in dismissal procedure, there are some dissimilarities in the procedure in both Codes such as:

1. CIC does not provide for the immediate notification to the ecclesiastical authority as provided by CCEO in *ipso iure* dismissal but in the third cause (the illegitimate absence of more than twelve months) demands the confirmation from Apostolic See. This cause binds only CIC.
2. In CIC, the *ipso facto* dismissal has the same effects as the mandatory and facultative dismissals that, the member is freed from all bonds. But CCEO does not attribute this effect in *ipso iure* dismissal and therefore, the dismissed member is still bound by the bonds and obligations of religious profession (they required to get the dispensation from the vows).
3. In the case of expulsion, in CCEO, the Major Superior or local Superior needs the consent of the council to expel the member but in CIC, the Major Superior can act without the consent (CCEO cc. 498, 551/CIC c. 703), and only the local Superior needs to get the consent of the council.
4. In CIC, for the facultative dismissal of temporarily professed religious, the confirmation of the decree from the ecclesiastical authority is required but in CCEO, in the case of orders and congregations, it is required if it is demanded by the statutes. In case of temporarily professed nuns, the decree must be confirmed by the Eparchial Bishop or by the Patriarch in those monasteries of Eparchial, Patriarchal or even Pontifical right that are situated within the territorial boundaries of the Patriarchal Church. This is a special provision for the particular law of each Church *sui iuris*.
5. In mandatory dismissal, the Superior General with the consent of the council issues the decree of dismissal according to CCEO and Supreme Moderator with the council according to CIC (which can be consent or consultation according to the proper law) and it does not require confirmation from the ecclesiastical authority in CIC but requires confirmation in CCEO.
6. In CCEO in addition to the provision to make the administrative recourse within 15 days, unless the Apostolic See confirms the decree of dismissal, the religious can demand that the case be tried in judicial

proceedings (CCEO c. 501).³¹ Though both Codes provide a unified administrative procedure, comparing to the Latin code, the Oriental code respects the rights of the members and it provides the option for judicial recourse. In the case of judicial recourse, the tribunal of the immediate superior of the one who confirmed, is the competent tribunal to receive the recourse.

7. In the administrative recourse, the Patriarch/Major Archbishop is permitted to deal with the recourse for the institutes within the territory even for the Pontifical right institute whose decree is confirmed by the Apostolic See. According to CCEO c. 501 §3, this special provision is granted to the Particular law of each Church *sui iuris*.

Conclusion

All these explanations make clear that both Codes promote a canonical procedure for the dismissal in order to solve the conflicts amicably within the religious institute, which involves correcting the offender and repairing the damage. It is also made obvious that the provisions that are given to the competent authority reminds them about the greatest necessity to become aware about all these provisions of law with clarity. It is also expected at the same time that they should carefully handle the procedure in order to use it righteously without violating anybody's rights. They also need to keep in mind the principle that punishments are always intended to express the merciful face of the Church and thereby to be applied with equity and justice. It is obvious that the administrative procedure provides ample possibilities to the members in the form of rights and to the superiors in the form of obligations in order to settle the issues amicably. Conclusively, the procedure of dismissal, which is extra-judicial in nature protects sufficiently the rights of the religious and safeguards the common good, which is the ultimate aim of the disciplinary procedures in the Church.

³¹ Jobe Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes* (Ottawa, Faculty of Canon Law, 2008), 278, 280.