

FROM RESERVATION TO VIGILANCE: A POSSIBLE STEP IN DEALING WITH THE *DELICTA GRAVIORA*

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The article “From Reservation to Vigilance: A Possible Step in dealing with the *Delicta Graviora*” presents the need and possibility of a gradual transition from the system of reservation to the system of vigilance in dealing with the *delicta graviora*. The present legislation of the Holy See regarding the *delicta graviora* seems to have not sufficiently taken into consideration the three-tiered hierarchical structure of the Eastern Catholic Churches. The Heads and Synods of the Eastern Catholic Churches do not have any competence or role in dealing with these delicts of their clerics. Considering the present legislation as an instance of emergency and an extraordinary measure, this study discusses the possibility of assuming the patriarchal *ius vigilantiae* in CCEO can. 89 §1 as a principle of harmonious coordination of penal competence among various hierarchical levels instead of the present system of reservation. It is true that both the systems of reservation and vigilance imply limits to the autonomy of the lower authorities. However, the system of vigilance seems to have certain advantages over that of the reservation.

The Latin Church has a predominantly two-tiered hierarchical structure composed of the supreme authority and the episcopal authority. But the Eastern Catholic Churches have a three-tiered hierarchical structure comprised of the supreme power of the Roman Pontiff and of the College of Bishops, the intermediary power of the

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Patriarchs and their Synods, and the power of the eparchial Bishops. Compared to the Latin canon law, the intermediary authorities are a distinctive feature of the hierarchical organization of the Eastern Catholic Churches. However, the present legislation of the Holy See regarding the *delicta graviora* seems to have not sufficiently taken into consideration this three-tiered hierarchical structure of the Eastern Catholic Churches. In the context of the crisis of the sexual abuse of minors by clerics, the supreme authority of the Church reserved the so-called *delicta graviora* to the Congregation for the Doctrine of Faith (CDF) in 2001 and consequently, the Heads and Synods of the Eastern Catholic Churches do not have any competence or role in dealing with these delicts of their clerics. It is true that in both the Codes, there are provisions for the reservation of *delicta graviora* from the part of the supreme authority and, thus, the present legislation can be justified as an instance of emergency and an extraordinary measure. Has the time arrived for a penal legislation that gives due space to the judicial autonomy of the Heads and Synods of Eastern Catholic Churches making them sharers in the responsibilities? This question becomes more relevant in the context, where even the Roman Pontiff criticises the “excessive centralization” in the Church as it “complicates the Church’s life and her missionary outreach.”¹ This study discusses the possibility of assuming the patriarchal *ius vigilantiae* in CCEO c. 89 §1 as a principle of harmonious coordination of penal competence among various hierarchical levels instead of the present system of reservation.

1. The System of Reservation

CCEO c. 1152 §2, 1° mentions delicts reserved to the Apostolic See. The Code, however, does not identify these reserved delicts. On 30 April 2001, Pope John Paul II issued the Motu Proprio *Sacramentorum Sanctitatis Tutela* (SST), reserving certain *delicta graviora* to the CDF, and promulgated the substantive and procedural *Normae de gravioribus delictis*.² SST addressed “*totius Catholicae Ecclesiae Episcopos aliosque Ordinarios et Hierarchas.*” Subsequently, several modifications were

¹ Pope Francis, Apostolic Exhortation *Evangelii Gaudium*, 24 November 2013, AAS 105 (2013) 1019-1137, n. 32.

² John Paul II, Motu Proprio *Sacramentorum Sanctitatis Tutela*, 30 April 2001, AAS 93 (2001), 737-739. English trans.: William H. Woestmann, *Ecclesiastical Sanctions and the Penal Process: A Commentary to the Code of Canon Law* (Ottawa: St. Paul University, 2003²) 300-309.

made to the *Normae*.³ On 21 May 2010, the CDF made public a revision of the original *Normae de gravioribus delictis*.⁴

The cases of *delicta graviora*, while being reserved to the judicial power of the Roman Pontiff, are allocated directly by law to the Apostolic Tribunal of the CDF, which acts in the name of the Roman Pontiff with ordinary power.⁵ This reservation of grave delicts to the CDF has two meanings: on the one hand, what is reserved is the investigation and prosecution of certain delicts. This reservation does not preclude lower level authorities such as eparchial Bishops from investigating and prosecuting these reserved offences, but, when they do so, they act not in their own names but by special delegation from and according to the special norms issued by the CDF.⁶ The reservation of these delicts to the CDF also entails: 1) the right of the CDF to receive complaints arising from these delicts directly and to prosecute them; 2) the obligation of the local authorities to inform the CDF of their receipt of a denunciation for one of these reserved delicts and to keep it apprised of the development of the case until its conclusion; and 3) the exclusive competence of the CDF to hear appeals and recourses against the decisions of the lower tribunals in these cases.⁷ On the other hand, what is also reserved to the CDF is the authority to remit the penalties imposed or incurred as a result of the commission of these reserved delicts.⁸

The reserved delicts are those against faith, as well as those committed against morals and in the celebration of the sacraments. The delicts against faith reserved to the CDF are heresy, apostasy and schism (cc. 1436 -1437). In these cases, it pertains to the Hierarchy to undertake a judicial trial in the first instance or issue an extrajudicial decree, with due regard for the right of appeal or recourse to the CDF. Unlike the

³ Various modifications were made on 7 November 2002, 7 February 2003, and 14 February 2003. Cf. William H. Woestmann, *Ecclesiastical Sanctions and the Penal Process*, 314-316.

⁴ Congregation for the Doctrine of Faith, *Normae de delictis Congregationi pro Doctrina Fidei reservatis seu Normae de delictis contra fidem necnon de gravioribus delictis*, 21 May 2010, AAS 102 (2010) 419-434.

⁵ Manuel Jesús Arroba Conde, *Diritto processuale canonico* (Roma: Edizioni, 2006⁵) 112.

⁶ Congregation for the Doctrine of Faith, *Normae de delictis*, art. 13.

⁷ John P. Beal, "The 1962 Instruction *Crimen Sollicitationis*: Caught red-handed or handed a red herring?," *Studia Canonica* 41 (2007) 199-236, 202-203.

⁸ John P. Beal, "The 1962 Instruction *Crimen Sollicitationis*," 203.

other *delicta graviora* whose remission is reserved to the CDF in the external forum, the Hierarchy retains the power to remit the imposed major excommunication involving these delicts. In these crimes against faith, competency normally falls to the Hierarchy but, in the light of the revised *Normae*, the CDF becomes competent in the case of an appeal or recourse.⁹

The procedural norms in the cases of the more grave delicts committed against morals and in the celebration of the sacraments are slightly different. The CDF is the Supreme Apostolic Tribunal for the Latin Church as well as the Eastern Catholic Churches for the judgment of these delicts (art. 8 §1). Whenever the Hierarchy receives the report of a grave delict, which has at least the semblance of truth, he is to conduct a preliminary investigation to ascertain the facts. Once the preliminary investigation has been completed, the Hierarchy is to communicate the matter to the CDF. The CDF, unless it calls the case to itself due to particular circumstances, will direct the Hierarchy how to proceed further (art. 16). If further procedure is ordered by the CDF, the Hierarchy is to carry it out with the help of a tribunal following the norms given by the CDF. The acts of the tribunal are to be sent to the CDF. Appeal against the sentence of the tribunal is only to the CDF.

This reservation is explained mainly on the basis of the gravity of the delicts. The gravity depends on the goods that the law wants to protect. Therefore, the severity of the procedure is proportionate to the goods that the law wants to defend.¹⁰ According to B.F. Pighin, the gravity of these delicts depends not only on the objective moral seriousness of the behaviour configured as offence, but also on the negative ecclesial impact of these delicts, as in the acts of sacrilege against the Eucharist.¹¹ The reservation of these delicts to the Apostolic See is explained also as a response to the negligence of the lower authorities. For J. I. Arrieta, the reservation is “a measure of ‘*controtendenza*’ (countertrend) with respect to the criteria established by the Code in the application of penal sanctions, but in answer to a

⁹ Federico Lombardi, “The significance of the publication of the new ‘norms concerning the most serious crimes’,” http://www.vatican.va/resourceresources_lombardi-nota-norme_en.htm l., accessed in 2020.

¹⁰ Charles J. Scicluna, “Delicta graviora: Ius Processuale,” in Andrea D’Auria - Claudio Papale, ed., *I delitti riservati alla Congregazione per la Dottrina della Fede* (Roma: Urbaniana University Press, 2014) 109-128, 109.

¹¹ Bruno F. Pighin, *Diritto penale canonico* (Venezia: Marcianum Press, 2008) 76.

specific duty of 'supplenza' (supplemental duty), which is also inherent in the hierarchical structure of the Church."¹²

The reservation of these *delicta graviora* to the Apostolic See has produced many beneficial effects. The system of reservation can be seen under the positive sense of helping dimension of subsidiarity. According to J. Manzanares, "theoretically, the use of papal reservation is not only legitimate but also can be healthy and even necessary for the sake of the good of the Church. Sometimes this is in order to counteract centrifugal tendencies which can lead to disintegration; sometimes, to promote the greater good of the faithful in a society of developing socialization who would not understand disparate solutions to identical problems resolved from within the same faith; sometimes to overcome divisions which cannot be resolved within a specific local Church."¹³

The Eastern Catholic Churches may be happy about the present reservation system perhaps due to the lack of sufficient qualified personnel in these Churches to deal with such delicate cases. It is also true that the CDF, in dealing with these cases, tries to involve the local authority asking to carry out the first phase of the process.

However, certain limitations can be pointed out to the present system of reservation of *delicta graviora*. Firstly, the reservation system may discourage or hinder the co-responsibility of the lower authorities. For J. M. Serrano, it is true that the immediate intervention of higher authorities puts more emphasize on the importance of the issues and the service of qualified persons is relevant in dealing with serious problems. However, it rejects or does not sufficiently appreciate the value of the normal instruments made available to everyone and does not promote the preparation and development of the persons involved in these missions.¹⁴ Secondly, the medicinal and relational approach to penalties requires an interpersonal relationship among the ecclesiastical authority, the accused and the victims. The system of reservation cannot guarantee such interpersonal relationship. Thirdly, in dealing with such most serious cases, disregarding the penal

¹² Juan Ignacio Arrieta, "Il progetto di revisione del libro VI del Codice di Diritto Canonico," *Archiv für katholisches Kirchenrecht* 181 (2012) 57-74, 58.

¹³ Julio Manzanares, "Papal Reservation and *Recognitio*: Considerations and Proposals," *The Jurist* 52 (1992) 228-254, 247.

¹⁴ José María Serrano Ruiz, "Cuestiones actuales de derecho procesal penal canonico," *Anuario Argentino de Derecho Canonico* 17 (2011) 119-146, 124.

competence and responsibility of the Eastern intermediary supra-episcopal authority goes against the canonical tradition of the first millennium. Finally, though the established policy is that the more grave delicts reserved to the CDF are to be tried in a judicial process (SST Art. 21§ 1), often CDF may decide to proceed by extrajudicial decree, even giving mandate for imposing perpetual expiatory penalties.

It is clear from the above-described procedure that the Heads and Synods of the Eastern Catholic Churches *sui iuris* do not have any competence or role in dealing with the *delicta graviora* of their clerics.¹⁵ In the letter *Ad Exsequendam*, the CDF writes to the Ordinaries and Hierarchs of the Latin and Eastern Churches to observe, in their tribunals, the provisions of the canons on delicts and penalties as well as the penal process as they define their Codes, taking into account the special norms of the Congregation in all the cases sent to them for execution. With regard to the procedural norms of *delicta graviora* George Nedungatt comments: "It is to be asked if in applying the same procedural norms to the Latin Church and the Eastern Catholic Churches, the Conciliar directive regarding the prerogatives of the Eastern Patriarchs (OE 9) has been duly observed."¹⁶

2. The System of Vigilance

In the context of the application of penalties, CCEO c. 89 §1 states: "it is the right and obligation of the Patriarch to exercise vigilance according to the norm of law over all clerics; if it appears that one of them merits punishment, he is to warn the Hierarch to whom the cleric is immediately subject and, if the warning is in vain, he himself is to take action against the cleric according to the norm of law."¹⁷ The

¹⁵ The Patriarch may have some role, as the Hierarch of his eparchy and as the Hierarch of those who directly depend on him.

¹⁶ This remark is found as an editorial addition in the last part of the article by C.G. Fürst, "Penal Sanctions in the Church," George Nedungatt, ed., *A Guide to the Eastern Code*, Kanonika 10 (Rome: Pontificio Istituto Orientale (2002), 787-800, 799.

¹⁷ The canon has its source in *Motu proprio Cleri Sanctitati* 260 §1, 1°: "*Patriarchae ius est et officium: Clericis universi patriarchatus vigilandi. Si quis poenam mereri videatur, Hierarcham eius moneat; et, monitione incassum facta, in clericum ipse ad normam iuris animadvertat*". B. Kurtscheid, in treating the law of the canons from the IV to the VII century, furnished a list of the patriarchal rights. In this list, he states that they enjoyed a right of vigilance over the observance of the laws of the Church in their entire territory. B.

obligation to exercise oversight over the clergy is primarily the responsibility of the eparchial Bishop (c. 192 §4, 5), who is to see that ecclesiastical discipline is observed throughout his eparchy; such matters include the ministry of the Word of God, the celebration of the sacraments and sacramentals, the worship of God and the cult of the saints, and the execution of pious wills (c. 201). In the light of c. 89 §1, it is the responsibility of the Patriarch to see that the eparchial Bishop fulfils this obligation of oversight, which includes the application of penalties to a cleric who commits a canonical delict. If the eparchial Bishop fails to impose a punishment on a cleric, the Patriarch can, after warning the eparchial Bishop in vain, intervene and impose a penalty upon the cleric according to the norm of law.

Canons on *ius vigilantiae* of the Patriarch, in the context of penal law, can be grouped into two. In the first group of canons, the Patriarch who exercises vigilance cannot intervene directly in the affairs of the eparchy, but can only report the abuses to the supreme authority. For example, according to CCEO c. 95 §2, the Patriarch has the duty to see that the eparchial Bishops faithfully fulfil their pastoral functions. If they gravely transgress in a certain matter, after having consulted the permanent synod unless there is danger in delay, the Patriarch is to warn them; if the warning does not result in the desired effect, he is to defer the matter to the Roman Pontiff. Canon 204 §4 also is a concrete expression of this type of patriarchal vigilance over the Bishops. According to this canon, if an eparchial Bishop has been illegitimately absent for more than six months from his eparchy, the Patriarch is to defer the matter to the Roman Pontiff. This type of patriarchal vigilance can be termed as "vigilance-with-reporting."

In the second group of canons, the patriarchal authority can intervene directly in the affairs of the eparchy. The case of c. 89 §1 is an example for such vigilance. Here the Patriarch can, after warning the eparchial Bishop in vain, intervene and impose a penalty upon the cleric according to the norm of law. This type of patriarchal vigilance can be

Kurtscheid, *Historia Iuris Canonici, Historia Institutorum: Ab Ecclesiae fundatione usque ad Gratianum* (Romae: Officium Libri Catholici, 1941) vol. I, 122, cited by T.A. Kane, *The Jurisdiction of the Patriarchs of the Major Sees in Antiquity and in the Middle Ages* (Washington D.C.: The Catholic University of America Press, 1949) 43. The Synod of the Copts (1898), sectio III, cap. I, art. III, 2, IV, 4 and that of Sharfè (1888), cap. VII, art. III, 6, 14 also mention of the Patriarch's *ius vigilantiae*.

seen also in CCEO c. 80, 2° and 4° in relation to the Metropolitan.¹⁸ This type of supra-episcopal supervision can be termed as “vigilance-with-intervention.” In canonical literature, authors generally call the first one “vigilance” while the second, “supplementary role.”¹⁹

Both these types of vigilance can be seen also in the Latin Code with regard to the Metropolitan’s vigilance over the diocesan Bishops. According to CIC c. 436 §1, within the suffragan dioceses, the Metropolitan is competent to see that faith and ecclesiastical discipline are carefully observed and to notify the Roman Pontiff if there be any abuses. As per CIC c. 395 §4, if the Bishop is unlawfully absent from the diocese for more than six months, the Metropolitan is to notify the Apostolic See. The supplementary role of the Latin Metropolitan consists in conducting a canonical visitation if the suffragan Bishop has neglected it (however, for a reason approved beforehand by the Apostolic See, CIC c. 436 §1, 2°) and in appointing a diocesan Administrator if he is not lawfully elected within the prescribed time (CIC c. 436 §1, 3°). However, the Latin Metropolitan does not possess the right to punish the clerics of a suffragan diocese as in the case of CCEO c. 89 §1. The Patriarch’s power to punish the clerics of an eparchy within the patriarchal territory is a particularity of the three-tier structure of the Eastern penal system.²⁰

One of the juridical consequences of the *ius vigilantiae* is that “if someone who has right to exercise vigilance (*ius in vigilando*) does not exercise this right/duty, he undoubtedly commits an act of negligence, thus becoming guilty of negligence, and assuming to himself the responsibility for what has happened. When the obligation of vigilance is neglected, we have the realization of *culpa in vigilando*.”²¹ J. I. Arrieta

¹⁸ It is for the Patriarch: to supply for the negligence of Metropolitan according to the norm of law; to warn a Metropolitan who has not appointed a finance officer according to can. 262 §1; if the warning has been to no avail, to appoint personally the finance officer.

¹⁹ Peter Erdö, “Can. 436,” *Exegetical Commentary on the Code of Canon Law* (Montreal: Wilson & Lafleur, 2004) vol. II/1, 951-953.

²⁰ In the Eastern Code, the Metropolitan of the patriarchal Church also possess these two types of vigilance in the eparchies of their province. Cf. CCEO c. 133 §1, 4°, 5° and 6°. However, the patriarchal right of can. 89 §1 does not belong to a Metropolitan.

²¹ Danilo Ceccarelli Morolli, “Notes on *Ius in vigilando* (the Exercise of Vigilance) according to the *Codex Canonum Ecclesiarum Orientalium* (CCEO),” *Iura Orientalia* 6 (2010) 71-80, 75, found on www.iuraorientalia.net, accessed in 2020.

is of the opinion that the Pastors, having a duty of vigilance, are punishable for the omission of due diligence.²²

3. From Reservation to Vigilance

Authors consider that the present reservation of *delicta graviora* is a case of emergency and an extraordinary measure. J. I. Arrieta observes:

After years of work, looking for ways to deal with the penal emergencies in various countries in the eighties and nineties, trying to follow the general principles of the Code of 1983, encouraging the penal intervention of local Ordinaries or looking to equip certain Bishops' Conferences of a special law, the Congregation for the Doctrine of the Faith had recourse to an extraordinary measure. It was decided to make effective art. 52 of the Ap. Constitution Pastor Bonus, which since 1988 reserved to the Congregation the 'particularly serious' crimes, indicating taxatively, with this new measure, which would be in concrete these crimes falling within the exclusive jurisdiction of the Congregation.²³

Once the emergency passes, there should be a more stable legislation, where the present reservation of competence could be reorganized. B. F. Pighin summarizes the wish expressed by several canonists regarding the current legislation of *delicta graviora* in the following words:

Once the serious situation that has affected some particular Churches because of the scandalous delicts committed especially against the sixth commandment of the Decalogue by sacred ministers against minors is remedied, it is licit to hope that the current phase, which in some respects takes on characters of emergency in penal matters, be readily overcome. Procedures that provide, as much as possible, guaranty of a serene and balanced judgment for the good of the Church, the minister of justice and mercy, for the protection of the rights of individual believers involved in criminal cases and for the growth of the equity in contemporary society are desirable.²⁴

²² Juan Ignacio Arrieta, "Il progetto di revisione del libro VI del Codice di Diritto Canonico," 69.

²³ Juan Ignacio Arrieta, "Il progetto di revisione del libro VI del Codice di Diritto Canonico," 58.

²⁴ Bruno F. Pighin, *Diritto penale canonico*, 86.

The proposal presented below is in view of a gradual transition from the system of reservation to the system of vigilance. In a future revision of the legislation of *delicta graviora*, the proposal is to adopt the *ius vigilantiae* of CCEO c. 89 §1 as a possible principle of harmonious coordination of penal competence at various hierarchical levels instead of the system of reservation. In the concept of “vigilance-with intervention,” the competence is to the Hierarch. Only when the Hierarch does not act properly, the higher authority may intervene. The concept needs to be developed and practical measures be designed for an effective exercise of such *ius vigilantiae* by the higher authorities over the administration of justice at the lower levels.²⁵ The proposal is for a gradual transition in two phases.

In the first phase, the reservation of these delicts would still be necessary, but to the patriarchal ordinary tribunal. In this situation, the eparchial Bishop, after the preliminary investigation, reports such cases to the patriarchal ordinary tribunal. Thus, the first instance of the *delicta graviora* committed against morals and in the celebration of the sacraments is reserved to the patriarchal ordinary tribunal and only the appeal to the CDF. This way of organizing the competence already exists in the Church, though in a slightly different way, with regard to the *delicta graviora* against faith, in which “competency normally falls to the Ordinaries but, in light of the revised *Normae*, the CDF becomes competent in the case of an appeal or recourse.”²⁶ Further, CCEO foresees the possibility of reserving the adjudication of certain cases to the patriarchal ordinary tribunal by particular law (c. 1063 §4, 5°). Once the instance has been finished before the patriarchal ordinary tribunal, all of the acts of the case are to be transmitted *ex officio* to the CDF as soon as possible (Cf. SST Art. 26). The Promoter of Justice of the CDF has the right to challenge the sentence.

In the second phase, once the patriarchal authority is sure that the individual eparchies are in a position to deal with the cases of *delicta graviora*, the reservation could be revoked and only a “vigilance-with-intervention” of the patriarchal authority over the eparchial decisions

²⁵ The canonical system has provisions for a certain vigilance by the intermediate authority over all tribunals within the territorial boundaries of the patriarchal Church (can. 1062 §5) and by the Apostolic Signatura, over the tribunals of the universal Church (PB art. 124, 1°).

²⁶ Federico Lombardi, “The Significance of the Publication of the new ‘Norms concerning the most Serious Crimes’,” http://www.vatican.va/resources/resources_lombardi-nota-norme_en.html, accessed in 2020.

would be necessary. This means, even if nobody makes an appeal, the eparchial tribunal should send the sentence together with the acts of the case to the patriarchal ordinary tribunal. In the same way, once the Apostolic See is sure that the Churches *sui iuris* are in a position to deal with such serious cases, the reservation of appeal to the CDF can be revoked and a "vigilance-with-intervention" from the part of the CDF over the patriarchal tribunal's decisions would be sufficient. In such an ideal situation, where the system of reservation does not exist anymore, the *delicta graviora* are dealt in the first instance at the eparchial level. However, due to the seriousness of these delicts, the sentence together with the acts of the case are sent to the patriarchal ordinary tribunal which has the right and obligation of "vigilance-with-intervention" over the eparchial decisions. In some of the really most serious cases, the same "vigilance-with-intervention" can be exercised by the CDF over the decisions of the patriarchal ordinary tribunal. This means that the patriarchal ordinary tribunal should send the acts of such serious cases to the CDF and the CDF will have the right to intervene.

What is the necessity of sending the acts of the case to the higher authority from the lower level with regard to the *delicta graviora* if nobody makes an appeal or recourse? The recent scandal of sexual abuse of minors by clerics revealed the negligence and errors of the local authority in dealing with such serious delicts. The negligence of the eparchial authority may refer to the non-punishment of the offender or the non-sufficient punishment. In the so-called "pastoral handling" of the serious cases, due to the unjust settling of the issues, it is possible that nobody makes a recourse to the higher authority. The victims, due to their ignorance of the canonical penal law, would be content with a nominal punishment of the offender by the ecclesiastical authority. The vigilance by the higher authority helps to guarantee and verify the correct handling of these serious cases by the lower tribunals.

This transition need not take place simultaneously in all of the patriarchal and major archiepiscopal Churches. The resources and the situation of each Church *sui iuris* should also be taken into consideration. It is possible that the Eastern Catholic Churches themselves will oppose this system of vigilance due to the lack of qualified personnel in their Churches to deal with these serious crimes. The proposal is for a gradual shift in the direction of the judicial autonomy of the Churches *sui iuris*. The reservation of *delicta graviora* to the patriarchal ordinary tribunal together with the *ius vigilantiae* of

the CDF could be tried first *ad experimentum* in some of the Churches *sui iuris* on the basis of a special law specifically approved by the Roman Pontiff. However, it is almost sure that the initiative for more penal competence could not be expected from the lower authorities because of the “odious” nature of penal law. Therefore, the higher authority should take the initiative in this regard and try to encourage and prepare the lower authorities to assume their responsibilities.

This transitional nature and gradualness can also refer to the number of reserved cases. Even among the cases of *delicta graviora*, there can be differences of gravity. The proposed system of vigilance may start with less serious delicts and gradually include the more serious ones. Among the present cases of *delicta graviora*, not all of them seem to deserve or require the intervention of the supreme authority. For example, some of the reserved delicts against the sacrament of Eucharist and Penance, like retaining the consecrated species for sacrilegious purposes or attempted sacramental absolution of the accomplice in Confession, can be effectively handled with required seriousness at the patriarchal level. On the other hand, not only the delicts of the present *delicta graviora*, but also other delicts can be reserved to the patriarchal ordinary tribunal or brought under the vigilance of the Patriarch, if in the decision of the synod of Bishops, those delicts deserve a more serious approach in the particular context of the Church *sui iuris*.

The above-mentioned “vigilance-with-intervention” by the higher authority need not be seen as an intrusion into the autonomy of the lower authority. The vigilance is not to curtail the competence of the lower authorities but to compensate their negligence and shortcomings. “Vigilance by a Church official does not take away the autonomy and responsibility of those over whom vigilance is exercised: it is intended to support and enhance these as part of the expression of communion within the Church.”²⁷ However, most often, “any authority accorded to hierarchs at an intermediate level is viewed as an encroachment on the primatial authority of the Roman Pontiff or the rights of the Bishops.”²⁸ Instead, this should be considered under the bi-directional dimension of the principle of subsidiarity which “refers to the fact that while the autonomy of the inferior authority is

²⁷ James H. Provost, “The Sides of Catholic Identity,” J.R. Wilcox - I. King, ed., *Enhancing Religious Identity: Best Practices from Catholic Campuses* (Georgetown University Press) 18-26, 21-22.

²⁸ John D. Faris, “Synodal Governance in the Eastern Catholic Churches,” *Iustitia* 2/2 (2011) 313-338, 315.

affirmed, the right to intervention of the superior authority is neither denied nor defied."²⁹ There is a legitimate supra-episcopal concern to foster ecclesial accountability, exercising certain vigilance regarding the proper fulfilment of episcopal responsibilities. "The authority divinely entrusted to each Bishop is not his individual possession, but is entrusted to him within a collegial context for exercise according to collegial norms."³⁰

Does the exercise of *ius vigilantiae* by the intermediary structures imply a *deminutio capitis* of the Eastern eparchial Bishops in comparison with those of the Latin Church in the penal administration? It should be admitted that the synodality of the Church *sui iuris* brings certain limits to the individual eparchial Bishops. However, as stated in *Pastores Gregis*, n. 61, "Synodality does not destroy or diminish the legitimate autonomy of each Bishop in the governance of his own Church; rather it affirms the spirit of collegiality of the Bishops who are co-responsible for all the particular Churches within the patriarchate."³¹ As P. Szabó remarks, "The particular Churches can hardly be treated as 'monads' to themselves and separated from each other; and, the integrity of the episcopal power is not to be understood in the sense of 'sovereignty', that is, as if he were a protagonist to be able to free himself from the reality of the other neighbouring Churches and the universal."³²

There is a multi-faceted horizontal-vertical relationship among the Churches within the *communio* presided over by the Church of Rome.

²⁹ Péter Szabó, "Ancora sulla sfera dell'autonomia disciplinare dell'Ecclesia sui iuris," *Folia Canonica* 6 (2003) 163. English text is from C.G. Prakasam, *Legislative Authorities of Particular Laws in CIC and in CCEO in Light of the Dialectic between the Universal/Common Law and the Particular Law*, Doctoral thesis extract (Rome: Pontificia Università Urbaniana, 2013) 60. According to Eugenio Corecco, "The theological literature also reveals in a fairly evident way the predominance of its negative function, which is that of posing a limitation of the hierarchical power, at the expense of its positive function of providing aid for the inferior levels." Eugenio Corecco, *Canon Law and Communio*, ed., G. Borgonovo - A. Cattaneo, (Città del Vaticano: LEV, 1999) 377.

³⁰ Michael K. Magee, *The Patriarchal Institution in the Church: Ecclesiological Perspectives in the Light of the Second Vatican Council* (Rome: Herder, 2006) 171.

³¹ John Paul II, Apostolic Exhortation *Pastores Gregis*, 16 October 2003, AAS 96 (2004) 825-927.

³² Péter Szabó, "Ancora sulla sfera dell'autonomia disciplinare dell'ecclesia sui iuris," 172, note 38.

Only in the light of the dialectic of this multi-faceted relationship, can one appreciate certain necessary limits to the discretionary authority of individual Bishops and the autonomy of the particular Churches.³³ The ecclesiology of communion and the 'subsidiary' dimension of the principle of subsidiarity justify the *ius vigilantiae* by the higher authority over the administration of justice of the lower authorities.

One of the objections to this proposal of *ius vigilantiae* by the intermediary authority may come from the need for some procedural laws for the East and the West. However, the same legislation for the Latin Church and the Eastern Catholic Churches should not be insisted if it does not help the *salus animarum* and goes against the hierarchical administrative structure of the Eastern Catholic Churches. Even in the Latin Church, a favourable attitude is seen at present towards recognizing more power to the intermediary authorities. It is true that in the West, the intermediate hierarchical levels of the Primate, Archbishops and Metropolitans with real supra-episcopal authority have practically fallen into disuse.³⁴ Particular councils, as the structure for accountability of Bishops, have fallen into desuetude despite efforts to provide a renewed and more ecclesial dimension to them in the Code (CIC 83 cc. 439-446).³⁵ However, authors express the desirability of restoring such powers to the intermediary authorities in the Latin Church. J. H. Provost mentions the usefulness of restoring these powers at least for special investigations in cases against the Bishops.³⁶ In more recent years, some Episcopal Conferences have shown an interest in obtaining an indult to establish a third instance

³³ Thomas J. Green, "The Latin and Eastern Codes: Guiding Principles," *The Jurist* 62 (2002) 235-279, 244.

³⁴ William De Vries, "Il problema ecumenico alla luce delle unioni realizzate in Oriente," *Orientali Christiana Periodica* 27 (1961) 64-81, 70.

³⁵ James H. Provost, "Toward Some Operative Principles for Apostolic Visitations," *The Jurist* 49 (1989) 543-567, 548.

³⁶ Cf. James H. Provost, "Toward some operative principles for Apostolic Visitations," 561. For Pope Francis, "The Second Vatican Council stated that, like the ancient patriarchal Churches, episcopal conferences are in a position "to contribute in many and fruitful ways to the concrete realization of the collegial spirit". Yet this desire has not been fully realized, since a juridical status of episcopal conferences, which would see them as subjects of specific attributions, including genuine doctrinal authority, has not yet been sufficiently elaborated. Excessive centralization, rather than proving helpful, complicates the Church's life and her missionary outreach." Pope Francis, *Evangelii Gaudium*, n. 32.

court in their own countries.³⁷ In the context of the present revision of the Latin penal law, J. I. Arrieta mentions the plan to assign a role to the Metropolitan in the administrative process for imposing perpetual penalties.

Dealing with the perpetual sanctions, it was considered appropriate that for the effectiveness of the decree *there* would need some kind of confirmation from a higher authority, and wishing to avoid that this authority be the Holy See, was thought of respective Metropolitan, whose tribunal is ordinarily the second instance for judicial cases, according to can. 1438, 1°. Obviously, the attempt was to find inside the traditional organization of the Church an adequate instance that would avoid any feeling of centralization. [...]. From the initial reactions seems, however, that the Metropolitan of some countries, more sensitive to the civil liability for their decisions, do not want to be involved in the penal procedures of their suffragans, so that they do not find that the proposal is appropriate.³⁸

What really praiseworthy is the novelty presented in *Vos estis Lux Mundi* assigning competence to the Metropolitan to receive complaints against Bishops and make the initial enquiry regarding the delicts against the sixth commandment (Art. 10-11).

Conclusion

This study presented the need and possibility of a gradual transition from the system of reservation to the system of vigilance

³⁷ Lawrence G. Wrenn, "Can. 1444," J.P. Beal - J.A. Coriden - T.J. Green, eds., *New Commentary on the Code of Canon Law* (Bangalore: Theological Publications in India, 2003) 1632-1633.

³⁸ Juan Ignacio Arrieta, "Il progetto di revisione del libro VI del Codice di Diritto Canonico," 73: Free translation from the original in Italian language: "Trattandosi di sanzioni perpetue si riteneva opportuno che per l'efficacia del decreto fosse necessario un qualche genere di conferma da parte d'una superiore autorità, e volendo evitare che detta autorità fosse la Santa Sede si pensò al rispettivo Metropolita, il cui tribunale fa ordinariamente seconda istanza per le cause giudiziali, secondo il can. 1438, 1°. Com'è ovvio, si cercava di trovare all'interno dell'organizzazione tradizionale della Chiesa un'adeguata istanza che evitasse ogni sensazione di centralizzazione. [...] Dalle prime reazioni pare, però, che i Metropoliti di alcuni Paesi maggiormente sensibili alla responsabilità civile delle loro decisioni non vogliono vedersi coinvolti nei provvedimenti penali dei suffraganei, sicché non trovano che la proposta sia opportuna."

in dealing with the *delicta graviora*. It is true that both the systems of reservation and “vigilance-with intervention” imply limits to the autonomy of the lower authorities. However, the system of vigilance seems to have certain advantages over that of the reservation. First of all, since this system recognizes the penal competence of the patriarchal authority, it is in more harmony with the Eastern canonical tradition. Dealing with the cases locally can contribute to a better knowledge of the details of the cases. For the accused and the victims, a procedure at the local/intermediate level is more appropriate than the one at the supreme level. A relational approach in the penal process is possible more at the local and intermediate level. This system of vigilance could also lessen the over-responsibility of the Apostolic See in dealing with the *delicta graviora*. Because of the reservation system, public opinion (often erroneously) could attribute the responsibility for the occurrence/survival of these crimes to the Apostolic See.³⁹ The system of vigilance serves better to form the personnel at the lower and intermediate level in dealing with the serious penal cases. The vigilance system promotes the co-responsibility at the lower levels and at the same time, assures the necessary seriousness in handling these cases.

³⁹ The “Concluding observations on the second periodic report of the Holy See” by The United Nations Committee on the Rights of the Child is an example of this public opinion. Cf, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FVAT%2FCO%2F2&Lang=en. Accessed on 15 April 2015.