

APPEAL AND RECOURSE PROCEDURES AGAINST ECCLESIASTICAL PENALTIES ACCORDING TO THE *CODE OF CANONS OF THE EASTERN CHURCHES*

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This article, entitled, "Appeal and Recourse Procedures against Ecclesiastical Penalties according to the Code of Canons of the Eastern Churches," addresses not only the delicts reserved to the Congregation for the Doctrine of the Faith but also non-reserved delicts. A principal focus is on the determination of the competent superior for recourse as well as the competent appeal tribunal. Therefore, the article considers the differences which occur for processes taking place both inside and outside the territories of the patriarchal and major archiepiscopal churches *sui iuris*.

Introduction

This article will focus on appeals in judicial penal processes and recourses against extra-judicial decrees imposing penalties upon clerics. However, it will not address recourses or appeals regarding penalties imposed by competent religious superiors. This author believes this topic can be better handled in a separate article. All the canon references unless otherwise indicated will be to the *Code of Canons of the Eastern Churches*.

Although the term, "recourse," is found in at least 60 places in the CCEO, this article will focus solely on recourses against extra-judicial decrees imposing penalties. Further, this article will not be as

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comprehensive in scope as what can be found in *A Practical Commentary to the Code of Canons of the Eastern Churches*¹ published in 2019. However, this commentary will be one of the resources used by this author. This author will also depend upon his own experience in dealing with such recourses and appeals.

Since this topic concerns recourses to higher competent authorities and appeals in judicial cases to tribunals of higher instances, it is necessary at the outset to clarify the role of the patriarch and his synod of bishops and permanent synod and the role of the major archbishop and his synod of bishops and permanent synod regarding these matters.

The governance of the patriarch is limited by territory. Canons 146 – 150 make it clear that the patriarch does not have any disciplinary power over any of the faithful outside the territorial boundaries of his patriarchate with the exception of liturgical laws issued by the synod of the patriarch (c. 150). This same limitation applies to major archbishops and major archiepiscopal churches (cf. c. 152). Thus, recourse and appeals from decisions made in eparchies located *outside* the territorial boundaries of patriarchates or major archiepiscopal churches are not resolved by the patriarch or his synod of bishops or by the major archbishop or his synod of bishops or by their tribunals. Later, we shall return to this matter as needed in this article.

There is a key word, “aggrieved,” which occurs in the canons concerning both recourses against administrative decrees and appeals in penal trials. The Latin word is *gravatum*. Canon 997 - §1 states that “a person who considers himself or herself to have been aggrieved by a decree can make recourse.”² And the same word appears on the main canon about judicial appeal: Canon 1309 states: “The party who considers himself or herself aggrieved by any sentence, as well as the promoter of justice and the defender of the bond in cases that require their presence, have the right to appeal the sentence to a higher judge, without prejudice to can. 1310.” Thus, we should look at the meaning of the word, *aggrieved*.

The meaning found in the Merriam-Webster Dictionary which is pertinent to our topic here is as follows: “suffering from an

¹ John D. Faris and Jobe Abbass, OFM Conv., eds., *A Practical Commentary to the Code of Canons of the Eastern Churches*, Librairie Wilson & Lafleur Inc, Chambly (Qc) Canada, 2019.

² The translation of the canons of the CCEO throughout will be 2001 translation by the Canon Law Society of America.

infringement or denial of legal rights."³ This meaning is certainly consistent with how the word is used in the six occasions where it is to be found in the *CCEO*, that is, in the following canons: 997, § 1; 998, § 1; 1119, § 3; 1307, § 1; 1309, § 1; 1373, §2. It is important to note here that being aggrieved is not something theoretical but very practical and personal: to be aggrieved in the canonical sense one must perceive oneself as having been adversely affected regarding one's own personal legal or canonical rights.

1. Recourses against Extra-Judicial Decrees Imposing Penalties:

When it comes to hierarchical recourse against any extra-judicial decree the immediately important element is the determination of what is the object of the recourse. In other words, there must be a determination of the precise canonical right of the person who is affected by the decree and how that canonical right was adversely affected. However, in the case of the extra-judicial process imposing the penalty, the object is immediately clear: the reversal of the decree which determined that an ecclesiastical delict was committed or the modification of the penalty.

There is one canon in the *CCEO* which determines what is required to impose a penalty by extra-judicial decree, namely, c. 1486 and one canon which determines how to have recourse against such a decree, c. 1487. As one considers c. 1486 it is clear that this canon has elements which are required for validity and which are designed to totally engage the accused in the process: the accused must be notified of the accusation as well as of the proofs and be given the opportunity of fully exercising the right of self-defense. Although not mentioned in the canon, it is a natural right for the accused to have canonical counsel. Further, an oral discussion must be held between the hierarch or his delegate and the accused with the promoter of justice and a notary present. In addition, as part of the natural right of defense the canonical counsel or advocate should also be invited to the oral session. Thus, before the hierarch should make a decision it would seem that the accused would have had a chance to fully know about the accusation and the proofs for it and would have had a dialog with the hierarch about it and had the chance to present fully his side of the picture. Such involvement of the accused might reduce the chances that there might be a need for recourse.

³ Merriam-Webster Online Dictionary: <https://www.merriam-webster.com/dictionary/aggrieved> (accessed 10/11/2020)

Canon 1486, §2 refers to a situation in which the accused might waive the need for the process outlined in the first paragraph. It mentions that if the hierarch suggests the imposition of the type of penalty mentioned in c. 1426, that is, the performance of some serious work of religion or piety or charity, such as certain prayers, or a pious pilgrimage, or a special fast, or the giving of alms, or a spiritual retreat, the process in Canon 1486, §1 can be omitted as long as the accused agrees to one of these type of penalties which are part of the ancient heritage of the Eastern Churches. In this case, there would, of course, normally be no recourse because of the prior agreement of the accused. However, it is possible that the accused might have a quick change of mind and file a recourse.

If the accused wishes to have hierarchical recourse against the extra-judicial decree which imposed a penalty, this person must directly request the reform of the decree to the proper hierarchical superior of the one who issued the decree. According to c. 1487, there is no requirement for a letter or petition to the hierarch who imposed the penalty to withdraw or modify the extra-judicial decree imposing a penalty before the aggrieved accused has recourse to the proper superior. However, such a letter or *remonstratio* is needed for the process of hierarchical recourse against an extra-judicial decree for the process in the Latin Church *sui iuris* because the Legislator does not provide for an exception to Canon 1734, §1 of the 1983 Code of Canon Law requiring for any hierarchical recourse the need to “seek the revocation or emendation of the decree in writing from its author.”

Concerning the process of recourse we turn to the provisions of c. 1487. First, there is a peremptory time limit for sending the recourse to the competent higher authority: ten days of useful time. Sometimes people misinterpret this time limit to mean ten business days. Canon 1544, § 2 describes useful time “as that which a person has to exercise or to pursue a right, so that it does not run for a person who is unaware or for one who cannot act.” Thus, if the tenth day falls on a day on which the competent higher authority is not able to act like on a Sunday, then the useful time concludes at the end of the next day the authority can act.

As should be evident from the existence of a peremptory time limit, it is important for all concerned to adequately document the receipt of decrees and letters. This protocol is to be found in the canons under the heading of the citation and intimation or notification of judicial acts (cc. 1190-1194). This author would like to draw particular attention to Canon 1192 with all its paragraphs. Here we note that the

Legislator urges that these communications be sent in such a way there is a receipt card or other method which documents the receipt of these communications. These methods will vary from country to country.

It is important to note that in the case of recourse against a decree issuing a penalty, the canon states that the act of recourse suspends the force of the decree.

Once the higher authority has ruled on the recourse, c. 1487, § 3 states that there is no further recourse against the decision of that higher authority. However, there is an exception to this limitation when the higher competent authority is the Congregation for the Doctrine of the Faith and the delict is one of those 'more grave delicts' reserved to that Congregation. The details of this further recourse will be taken up later in this article.

1.2 Determination of the Competent Higher Authority for Recourse:

This determination is based in part upon the type of delict involved: reserved to the Holy See or not; and in part upon territory.

1.2.1. Concerning Recourse in the Case of Reserved Delicts:

The reserved delicts are those which are now called more grave delicts (*graviora delicta*) and for these the competent higher authority is always the Congregation for the Doctrine of the Faith based upon the first *motu proprio*, *Sacramentorum Sanctitatis Tutela* published on November 5, 2001⁴ and then revised and published on May 21, 2010.⁵ Some of these delicts are already mentioned in the 1990 Code of Canons of the Eastern Churches as well as in the 1983 Code of Canon Law for the Latin Church, *sui iuris*. However, there are some which are a modification of existing law and notably some which are not found in either Code. Nonetheless, this *motu proprio* binds without exception all members of the faithful any *sui iuris* Eastern Church and of the *sui iuris* Latin Church. Thus, this *motu proprio* binds patriarchs and major archbishops and metropolitans, eparchs and exarchs both inside and outside the territories of patriarchal and major archiepiscopal churches.

One of those delicts which has been more notably addressed by church authorities in recent times is the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of

⁴ AAS, XCIII, n. 11, 5 November 2001, pp. 737-739.

⁵ AAS, CII, N. 7, 2 July 2010, pp. 419-430.

eighteen years. The Latin Church has a canon which has addressed this matter both in the 1917 Code (c. 2359, §2) and in the 1983 Code (c. 1395, § 2). No counterpart is to be found in the 1990 CCEO. Therefore, there was no delict of sex abuse of minors by a cleric affecting the Eastern Churches until the promulgation of the first *motu proprio Sacramentorum Sanctitatis Tutela*, Article 4 in 2001.⁶

There are nineteen different *graviora delicta* to be found in the 2010 version of *SST*. Those which more commonly occur seem to be the more grave delicts against the sanctity of the Sacrament of Penance mentioned in Article 4 and the more grave delicts against morals mentioned in Article 6.

Canon 1469 mentions the hierarch's faculty in law to decide whether a procedure for imposing penalties should be initiated or not and, if he should decide there should be a penal procedure, whether it is to be dealt with by way of a penal trial or extra-judicial decree. But in the case of reserved delicts, these decisions are made by the Congregation itself.⁷ To that end the norms of the *m.p. Sacramentorum Sanctitatis Tutela* require that, once the preliminary] investigation has been completed, the hierarch is to communicate the information gathered to the Congregation for the Doctrine of the Faith.⁸ There has been some discussion about what to do if the preliminary investigation reveals that the original allegation is no longer believable. However, on July 16, 2020 the Congregation for the Doctrine of the Faith published a manual for handling these *graviora delicta* cases called a *Vademecum* which pulls together the law as well as the praxis of the Congregation. Number 69 of this manual states that "once the preliminary investigation has concluded, whatever its outcome, the Ordinary or Hierarch is obliged to send, without delay, an authentic copy of the relative acts to the CDF."⁹

Although the aforementioned *motu proprio, SST*, affirms the Code's preference for the judicial trial for declaring a penalty¹⁰, the Congregation may direct the hierarch to proceed by way of the extra-judicial process. Although c. 1402, § 2 of the CCEO determines that

⁶ AAS, XCIII, n. 11, November 5, 2001.

⁷ Arts. 8, 16, 21, *SST*.

⁸ Art. 16, *SST*.

⁹ Bulletin of the Press Office of the Holy See, <http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2020/07/16/0386/00874.html> (accessed 10/11/2020)

¹⁰ Art. 21, § 1, *SST*.

privation of office, title, insignia, demotion to a lower grade, deposition can only be applied through a judicial process, the Congregation may give the faculty to the hierarch to impose perpetual penalties by way of an extra-judicial decree.¹¹ Moreover, the *m.p.* states that the Congregation has the faculty to present the most serious cases to the personal decision of the Roman Pontiff with regard to deposition, together with dispensation from the law of celibacy but only when it is manifestly evident that the delict was committed and after having given the guilty party the possibility of defending himself.¹²

Canon 1487, *CCEO*, discussed earlier in this article, is the law which determines how a recurrent proceeds against the imposition of a penalty by way of the extra-judicial process. The canons on the extra-judicial process do not mention that the accused has a right to employ the services of a canonical advocate. Yet, Canon 1003 on recourses against non-penal administrative decrees states that the "person making recourse always has the right to use an advocate or a procurator." Further, Canon 1486, § 1 specifically states that the accused "be given the opportunity of fully exercising the right of self-defense" ("*certior fiat data sibi opportunitate ius ad sui defensionem plene exercendi.*") In this complex matter, the only practical way for the accused to have such an opportunity for fully exercising the right of self-defense is by having a canonical advocate. Not only would that advocate assist with having recourse but, as mentioned earlier, would also be involved in that oral session mentioned in c. 1486, § 1 along with the hierarch, the promoter of justice, his or her client and the notary only after which is there a decision and any penalty imposed.

At the Congregation for the Doctrine of the Faith there are two possible levels of recourse. This is mentioned Article 27 of *Sacramentorum Sanctitatis Tutela*. The first level is at a Congresso. A decision in a Congresso is essentially the decision of the Prefect in consultation with those personnel at the Congregation which the proper law of the Congregation directs should be involved. The internal norms of the Congregation for the Doctrine of the Faith are not generally available. However, personal experience has indicated that the Prefect is advised by the Archbishop Secretaries, the promoter of justice and any other personnel who may be called to this task.

¹¹ Art. 21, § 2, 1^o, *SST*.

¹² Art. 21, § 2, 2^o, *SST*.

Article 27 states that further recourse from the decision of the *Congresso* must be presented within the peremptory period of sixty canonical days (useful time) to the Ordinary Session of the Congregation (*Feria IV*)¹³ which will judge on the merits of the case and the lawfulness of the Decree. However, subsequent to the publication of the 2010 *motu proprio, SST*, on November 3, 2014 the Roman Pontiff, His Holiness, Pope Francis, in the Audience granted to the Cardinal Secretary of State, decreed that a special *Collegium* be established which is made up of seven Cardinals or Bishops, who may be either members of the Dicastery or external to it and which collegium would be an aid to or instance of the Ordinary Session of the Congregation (*Feria IV*). This *Collegium* is to decide recourses against single administrative acts issued or approved by the Congregation in cases of *delicta graviora*. However, it would not have the competence to accept a recourse if the offender is one invested with episcopal dignity. In such a case, the recourse would be decided by the Ordinary Session of the Congregation itself. The Holy Father decreed that his decree would go into effect on November 11, 2014 when the decree establishing the new *Collegium* was published in *L'Osservatore Romano*.¹⁴

It is the procurator-advocate who assists the accused in proposing recourse to the Congregation for the Doctrine of the Faith, both the initial recourse and any subsequent recourse to the *Collegium*. This will entail the procurator-advocate submitting written observations or *memoriale* first to the *Congresso* and addressed to the Cardinal Prefect. If the *Congresso* denies the request in their decree, that decree will likely mention the faculty to submit a further recourse as mentioned in Article 27 described above. Again, the procurator-advocate will submit another brief or set of observations to the *Collegium*.

If the *Collegium* does not reverse the preceding decisions, Article 27 of *Sacramentorum Sanctitatis Tutela* notes that any further recourse is excluded and references article 123 of the Apostolic Constitution, *Pastor Bonus*, which mentions the competence of the Supreme Tribunal of the Apostolic Signatura. This means that the Congregation for the Doctrine of the Faith is also a Supreme Tribunal for the adjudication not only of judicial matters which fall into its competence but also

¹³ *Feria IV* is the Latin translation of the day of the week, Wednesday, signifying that this body always meets on a Wednesday, not necessarily every Wednesday.

¹⁴ AAS, An. et vol. CVI, 7 Novembris 2014 N. 11, pp. 885-886.

administrative matters. This author has had the experience of having recourse to *Feria IV* on behalf of a priest-client some years ago. The decision of *Feria IV* was not favorable to the client and it is noteworthy that *Feria IV* stated in their decree that it had been presented to the Holy Father and he approved it "*in forma specifica*." Such language leaves no doubt that any further recourse is excluded.

1.2.2 Concerning Recourse in the Case of Non-Reserved Delicts:

In the matter of administrative recourse against extra-judicial decrees imposing penalties for delicts which are not reserved to the Apostolic See, one must consider whether the hierarch who issued the extra-judicial decree was within the territorial boundaries of a patriarchal church or of a major archiepiscopal church or outside those territorial boundaries.

The following are the names of patriarchal churches: Chaldean Catholic Church; Maronite Catholic Church; Armenian Catholic Church; Coptic Catholic Church; Syrian Catholic Church; Melkite Greek Catholic Church. The following are the names of the major archiepiscopal churches: Ukrainian Greek Catholic Church; Syro-Malabar Catholic Church; Syro-Malankara Catholic Church; Romanian Greek Catholic Church.¹⁵

1.2.2.1 Concerning Recourse within the Territorial Boundaries of A Patriarchal Church or of A Major Archiepiscopal Church:

Normally, the hierarchical superior for recourse against an extra-judicial decree of an eparch would be the metropolitan. However, it is well known that there are no metropolitans within any of the patriarchal territories.¹⁶ Hence, Canon 80 of the *CCEO* provides the solution when it says: "It is for the patriarch: 1^o to exercise the rights and to fulfill the obligations of a metropolitan in all places where provinces have not been erected." It is also necessary to note that the same solution is provided for the absence of metropolitans in a major archiepiscopal church if one carefully reads Canon 152: "What is stated in common law concerning patriarchal churches or patriarchs is understood to be applicable to major archiepiscopal churches or major

¹⁵ Faris - Abbass, *A Practical Commentary to the Code of Canons of the Eastern Churches*, pp. lxx - lxxv.

¹⁶ Faris - Abbass, *A Practical Commentary to the Code of Canons of the Eastern Churches*, pp. 255-256.

archbishops, unless the common law expressly provides otherwise or it is evident from the nature of the matter.”

Therefore, if someone who has received a penalty applied by the extra-judicial process described earlier which was issued by a decree of an eparchial bishop in the territory of a patriarchal or major archiepiscopal church where there are no metropolitans and wishes to present recourse, he must do so within the peremptory time limit of ten days to the patriarch or major archbishop. It will be for the patriarch or major archbishop concerned to decide whether to confirm or revoke the decree of the eparch. According to Canon 1487, §3 there is no further recourse to any higher authority.

There are certain major archiepiscopal churches which have metropolitan structures, namely, the Ukrainian, Syro-Malabar and Syro-Malankara major archiepiscopal churches. Thus, in those churches the proper superior to decide recourses against extra-judicial penal decrees issued by eparchs in those churches would normally be the metropolitan. Again, the norm of c. 1487, §3 about no further recourse beyond that metropolitan would apply.

We must keep in mind that both a patriarch and a major archbishop are the immediate ordinaries of their own eparchies. Thus, if a patriarch or major archbishop issues an extra-judicial decree imposing a penalty, one must consider who is the proper superior to hear that recourse.

The answer to this question is found in Canon 1006 which directs that particular law should be created and promulgated to form a special group of bishops within the boundaries of the patriarchal church or major archiepiscopal church which would handle recourse against any administrative decree of a patriarch or major archbishop acting in his own eparchy including recourse against an extra-judicial decree imposing a penalty. This canon states that there is no further appeal from the decision of this group of bishops but there could be a referral of the case to the person of the Roman Pontiff but not to any Roman dicastery. Yet, the norm of c. 1487, §3 forbidding any further recourse beyond this special group of bishops would seem to apply in this situation.

According to Canon 312 an exarch governs either in his own name or in the name of the one who appointed him. Apparently, the only exarch governing in his own name in any of the *sui iuris* Eastern Churches is the exarch governing the exarchial monastery of

Grottaferrata just outside of Rome.¹⁷ There may be exarchs who are appointed by the patriarch or major archbishop located within the territory of a patriarchal or major archiepiscopal church. If there is an exarch appointed for outside such territories, the appointment is made by the Apostolic See and so they are known as Apostolic Exarchs. It is clear that if the exarch who issued the decree governs in the name of the patriarch or major archbishop, recourse would be made to the patriarch or major archbishop.

1.2.2.2 Concerning Recourse *Outside* the Territorial Boundaries of A Patriarchal Church or of A Major Archiepiscopal Church:

Concerning the question of the competent superior for receiving recourses in these situations, we keep in mind that Canon 150, §2 states that "disciplinary laws or in the case of other decisions of the synod, they have the force of law *within* the territorial boundaries of the patriarchal church." As a consequence, the competent superior in this case would not be the patriarch or major archbishop.

As mentioned earlier, *outside* the territorial boundaries of a patriarchal church or of a major archiepiscopal church, eparchs and archeparchs are not elected by synods but are directly appointed by the Roman Pontiff according to Canon 149. Therefore, the competent superior for recourse from an extra-judicial decree imposing a penalty in a non-reserved case would be the Holy See. Based upon Article 58, §1¹⁸ of the Apostolic Constitution, *Pastor Bonus*, issued on 28 June 1988 by St. Pope John Paul II, it would appear that the competent dicastery would be the Congregation for the Oriental Churches for recourse against an extra-judicial decree imposing a penalty in a non-reserved case.

¹⁷ Faris - Abbass, *A Practical Commentary to the Code of Canons of the Eastern Churches*, p. 641.

¹⁸ Art. 58 – § 1. The competence of this Congregation extends to all matters which are proper to the Oriental Churches and which are to be referred to the Apostolic See, whether concerning the structure and organization of the Churches, the exercise of the office of teaching, sanctifying and governing, or the status, rights, and obligations of persons. It also handles everything that has to be done concerning quinquennial reports and the *ad limina* visits in accordance with arts. 31-32.

2. Concerning Appeals against A Definitive Sentence in A Judicial Penal Process:

The object of appeals in judicial penal processes as with recourses is twofold. The appellant may appeal the judgment concerning the crime itself. However, he may also simply appeal the penalty.

2.1 Procedures for the Introduction and Pursuit of an Appeal:

As we shall see later, the procedures for appeals from judicial definitive sentences in penal cases are similar but not exactly the same for cases of reserved delicts as for cases of non-reserved delicts. However, Canon 1311 determines that, after having received a full copy of the definitive sentence, the appellant has a peremptory time limit of fifteen (15) days of useful time to introduce the appeal before the judge who rendered the sentence. The introduction of the appeal is accomplished in writing in such a manner that there is no doubt about the identity of the appellant. For that reason, it may not be legitimately introduced either by facsimile or by e-mail.¹⁹ It may be introduced orally before the notary of the tribunal which issued the definitive sentence. Of course, the notary will make a written report of the introduction of the appeal and have the appellant sign it and the notary will sign it as the official witness.

Canon 1314 requires that the appellant pursue the appeal with the competent tribunal of appeal within a month of its introduction at the tribunal which issued the sentence. However, the judge who issued that sentence can authorize a longer time for the pursuit of the appeal. Paragraph 1 of that canon tells us all that is required to pursue the appeal is for the appellant to do the following: call upon the services of the competent judge of appeal to reverse or amend the challenged sentence and in writing; attach a copy of the challenged sentence; and indicate in writing the reasons for the appeal.

It is the duty of the judge who issued the sentence to send to the competent tribunal of appeal a copy of the acts authenticated by the notary of his tribunal.

We need now to consider the identification of the competent tribunal(s) of appeal.

¹⁹ Faris - Abbass, *A Practical Commentary to the Code of Canons of the Eastern Churches*, p. 2326 and especially note 274.

2.2 Concerning Competent Tribunal for Appeals in the Case of Reserved Delicts:

It is clear from a reading of *Sacramentorum Sanctitatis Tutela*, that the Congregation for the Doctrine of the Faith is solely competent to adjudicate those cases of *graviora delicta* specified in the *motu proprio*.²⁰ Therefore, it may itself judge such a case in first instance. However, it may and often authorizes the local hierarch (patriarch, major archbishop, metropolitan, eparch or exarch) to conduct a first instance trial concerning such delicts. Article 16 of this *motu proprio* makes it clear that only the Congregation for the Doctrine of the Faith is competent to hear a case of this kind in second instance. In any event, "once an instance has been finished in any manner before another tribunal, all of the acts of the case are to be transmitted *ex officio* to the Congregation for the Doctrine of the Faith as soon as possible" according to Article 26 §1 of this same *motu proprio*.

Even if there has been no appeal lodged from a first instance penal trial conducted outside the Holy See, Article 26, §2 makes it clear that the Promotor of Justice of the Congregation has the right to challenge a sentence. This right begins from the day on which the sentence of first instance is made known to Promotor of the Congregation. In such a case, a second instance tribunal would be constituted at the level of the Congregation to hear such a case in second instance. However, in cases of appeal by the accused, the Congregation has many times asked an individual bishop to "host its tribunal" of second instance in his diocese and is given the faculty to nominate the judges, the promoter of justice and the notary. The undersigned has served as presiding judge and *ponens* in such a second instance penal trial in the USA.

It is unique to definitive sentences issued in second instance by the Supreme Tribunal of the Congregation for the Doctrine of the Faith that the traditional principle of *duplex conformis sententia* does not apply. If in second instance the Congregation for the Doctrine of the Faith reverses the definitive sentence of first instance, that second instance sentence becomes *res iudicata* upon it being intimated to the parties, i.e., the promoter of justice and the accused and/or his procurator-advocate. According to *SST*, Article 28, 1° a "res iudicata occurs: 1° if a sentence has been rendered in second instance." This provision for *graviora delicta* cases totally differs from what Canon 1641, 1° provides for non-reserved penal trials, namely, "Without

²⁰ *SST*, Article 1, §1.

prejudice to the prescript of can. 1643, a *res iudicata* occurs: 1° if a second *concordant* sentence is rendered between the same parties over the same issue and on the same cause for petitioning.²¹

2.3 Concerning the Competent Tribunal for Appeals in the Case of Non-Reserved Delicts:

The competent tribunal for hearing appeals in these non-reserved penal trials follows the norms of the *CCEO* for regular contentious cases. However, there are differences depending on whether the case is being adjudicated within or outside the boundaries of a patriarchal church or a major archiepiscopal church.

2.3.1 Concerning the Competent Tribunals for Appeals in the Case of Non-Reserved Delicts *inside* the Boundaries of A Patriarchal Church or A Major Archiepiscopal Church:

Within the territories of patriarchal or major archiepiscopal churches, if there is a metropolitan, then an appeal from the tribunal of an eparchy may be pursued at the tribunal of the metropolitan. It should be noted that there are no metropolitans within the territory of any patriarchal church.²² In such cases, according to Canon 1063, §3, the Ordinary Tribunal of the Patriarchal or Major Archiepiscopal Church has competence to hear the appeals of any grade. However, this canon does not give *exclusive* competence to the Ordinary Tribunal. Thus, appeals may legitimately be lodged in these cases at the Apostolic Tribunal of the Roman Rota.²³ Similarly, if there has been erected an inter-eparchial tribunal of first instance within the territory of the patriarchal or major archiepiscopal church, the appeal is always to the Ordinary Tribunal of the Patriarchal or Major Archiepiscopal Church or to the Apostolic Tribunal of the Roman Rota. Finally, if an exarchate established by the patriarch or major archbishop within the territory has its own tribunal, the appeal would always be to the Ordinary Tribunal as just mentioned.

²¹ A fuller explanation about this matter can be found in *2009 Roman Replies & CLSA Advisory Opinions*, Canon 1641: *Res Iudicata* Without Concordant Sentences in *Graviora Delicta* Cases, Rev. Msgr. Mark L. Bartchack, J.C.D., Rev. Msgr. Frederick C. Easton, J.C.L., 154 ff.

²² Faris - Abbass, *A Practical Commentary to the Code of Canons of the Eastern Churches*, pp. 255-256.

²³ Faris - Abbass, *A Practical Commentary to the Code of Canons of the Eastern Churches*, p. 2009.

In non-reserved cases, the principle of the two-fold conforming sentence is maintained. Thus, if after an appeal receives a discordant sentence, the aggrieved party can appeal within the peremptory time limit of fifteen days useful time for a third hearing at the Ordinary Tribunal of the Patriarchal or Major Archiepiscopal Church or at the Roman Rota. Canon 1063, §3 states that the judges of these Ordinary Tribunals serve in rotation like the judges of the Roman Rota. In a penal case, if first instance tribunal has issued a definitive sentence of *constat* and then the second instance turnus issues a *non constat*, either the promoter of justice or the accused would likely appeal to the next turnus. The accused would be hoping for a second confirming *non constat*. The promoter of justice might believe that the second sentence should have been *constat* and so would likely appeal to the next turnus.

2.3.2 Concerning the Competent Tribunals for Appeals in the Case of Non-Reserved Delicts *Outside* the Boundaries of A Patriarchal Church or of A Major Archiepiscopal Church:

A definitive sentence issued by an eparchial tribunal located within a province may be appealed to the tribunal of the metropolitan according to Canon 1064, §1. However, since this canon like Canon 1063 does not say the metropolitan tribunal has *exclusive* competence for appeals in second instance, the appellant may appeal to the Apostolic Tribunal of the Roman Rota. Further, if there is to be an appeal to third instance in order to have a two-fold conforming sentence, the Roman Rota is the only competent tribunal for such a grade of trial (Cf. Canon 1065).

In the case of a definitive sentence issued in first instance by the metropolitan tribunal or by an eparchial tribunal having no superior authority below the Roman Pontiff, Canon 1064, §2 states that "an appeal must be made to the tribunal that the metropolitan or eparchial bishop has designated in a stable manner with the approval of the Apostolic See, with due regard for cann. 139 and 175." These two mentioned canons give greater specificity about the process of choosing of the tribunal of appeal in these cases. And again, an appeal may always be made in second instance to the Roman Rota.

If an inter-eparchial tribunal of first instance has been legitimately established outside boundaries, then any appeal would be made to that tribunal which the participating eparchial bishops have selected with the approval of the Apostolic See or to that tribunal actually

designated by the Holy See (Canon 1067, §5). If an inter-ecclesial tribunal of first instance has been legitimately established, any appeal would be made to that tribunal designated in a stable manner by the Holy See (Canon 1068, §4). As mentioned above, these tribunals do not have exclusive competence. As a result, appeals from the sentences issued by these tribunals are always made legitimately in second instance to Roman Rota.

Finally, if an Apostolic Exarchate has its own tribunal, sentences from that tribunal would be appealed to that tribunal designated in a stable manner by the Apostolic See or to the Roman Rota.

Conclusion

In conclusion, the author would like to commend to any canonist who is involved in any role in a penal process carried out under the authority of the Code of Canons of the Eastern Churches the study of the various elements which have been mentioned above.