

# NEW PROVISIONS OF CANON LAW ON THE SEXUAL ABUSE OF MINORS AND VULNERABLE ADULTS: A TEXTUAL STUDY WITH A PASTORAL PERSPECTIVE

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## Abstract

The penal norms of both the Latin (CIC) and the Eastern (CCEO) Codes were revised recently by Pope Francis: CIC through the apostolic constitution *Pascite gregem Dei* on 1 June 2021, and CCEO through *motu proprio Vocare peccatores* on 20 March 2023. In the revised texts of the Codes, canons 1398 and 1362 §1, 2° of CIC, and canons 1453 §§5-7 and 1152 §2, 2° of CCEO deal with the delict of sexual abuse of minors and vulnerable adults. The first part of this paper is a textual study of the latest norms on the delict of sexual abuse of minors and vulnerable adults, the corresponding penalties, and the procedure to be followed in dealing with this crime. The second part of the paper presents three pastoral observations regarding the topic: a) the need for clarity about the concept of vulnerable adults, b) the peculiar nature of the relationship among the faithful, clerics, and the ecclesiastical judicial authority, and c) the challenges emerging from the parallel ecclesiastical and civil judicial procedures.

**Keywords:** Penal Law, Abuse of minors, abuse of vulnerable adults, protection of minors, concept of vulnerable adults

## Introduction

The penal norms of both the Latin (CIC) and the Eastern (CCEO) Codes were revised recently by Pope Francis: CIC through the apostolic constitution *Pascite gregem Dei* on 1 June 2021, and CCEO through *motu*

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*proprio Vocare peccatores* on 20 March 2023.<sup>1</sup> In the revised texts of the Codes, canons 1398, 1362 §1, 2° of CIC and canons 1453 §5-7, 1152 §2, 2° of CCEO deal with the delict of sexual abuse of minors and vulnerable adults. There are still other norms to be observed regarding this delict, found in other Papal documents *Sacramentorum sanctitatis tutela* (SST/2021), *Vos estis lux mundi* (VELM/2023), and *As a Loving Mother (Come una madre amorevole/2016)*. The *Vademecum* published by the Dicastery for the Doctrine of Faith (DDF) in 2022, is a procedural handbook dealing with this topic.<sup>2</sup>

The first part of this article is a textual study of the latest norms on the delict of sexual abuse of minors and vulnerable adults, the corresponding penalties, and the procedure to be followed in dealing with this crime. The second part of the study presents three pastoral observations regarding the topic: a) the need for clarity about the concept of vulnerable adults, b) the peculiar nature of the relationship among the faithful, clerics, and the ecclesiastical judicial authority, and c) the challenges emerging from the parallel ecclesiastical and civil judicial procedures.

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## 1. Textual Study of the Norms

In the canons of the Codes, we shall identify four delicts regarding the sexual abuse of minors and vulnerable adults, their penalties, their prescription period, and the possible subjects of these crimes. We will start with the norms in CIC/1983 and CCEO,<sup>3</sup> proceed with the later legislations in other Papal documents, and conclude with the current legislation in *Pascite gregem Dei, Vocare peccatores* and SST/2021.

### 1.1 Sexual Abuse of a Minor

- **CIC/1983 can. 1395 §2:** A cleric who has offended against the sixth commandment of the Decalogue by committing a crime **with a**

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<sup>1</sup> For the English text, Sebastian Payyappilly, Ed. *A Compendium of Revised Norms of Corpus Iuris Canonici* (Bengaluru, Dharmaram Publications, 2023) 36-59.

<sup>2</sup>[https://www.vatican.va/roman\\_curia/congregations/cfaith/ddf/rc\\_ddf\\_doc\\_20220605\\_vademecum-casi-abuso-2.0\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.0_en.html) (accessed on 03.12.2023).

<sup>3</sup> See for more details, Ligo Mathew Edattukalayil, *The Clerical Sexual Abuse of Minors and the Role of the Diocesan Bishop* (Bengaluru, Dharmaram Publications, 2020).

**minor under the age of sixteen years** is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.

- **CCEO:** There was no explicit reference in the Eastern Code to the crime against a minor on the part of a cleric.
- **SST/2001 art. 4:** A delict against the sixth commandment of the Decalogue committed by a cleric **with a minor below the age of eighteen** is reserved by the Congregation for the Doctrine of Faith (CDF). Here, the age of the minor is raised from sixteen to eighteen.
- **SST/2010 art. 6:** The delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years is reserved to the CDF. In this case, **a person who habitually lacks the use of reason is to be considered equivalent to a minor.**
- **SST/2021 art. 6:** The delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years or **with a person who habitually has the imperfect use of reason** is reserved to the CDF.
- ***Pascite gregem Dei* can. 1398 §1,1°:** A cleric is to be punished with deprivation of office and with other just penalties, not excluding, where the case calls for it, dismissal from the clerical state, if he commits an offence against the sixth commandment of the Decalogue with a minor or with a person who habitually has an imperfect use of reason **or with one to whom the law recognises equal protection.**
- ***Pascite gregem Dei* can. 1398 §2:** A member of an institute of consecrated life or of a society of apostolic life, or any one of the faithful who enjoys dignity or performs an office or function in the Church, who commits the offence mentioned above is to be punished according to the provision of can. 1336 §§ 2-4, with the addition of other penalties according to the gravity of the offence.

There is no substantial difference between CIC and CCEO norms regarding this delict.

- ***Vocare peccatores* can. 1453 §5,1°:** A cleric, who commits a delict against chastity with a minor or with a person who habitually lacks the use of reason or with someone for whom the law

recognizes an equal protection, is to be punished with privation of office and other appropriate penalties, not excluding deposition if the case so warrants.

- ***Vocare peccatores* can. 1453 §7:** A religious or member of a society of apostolic life in the manner of religious and any lay person enjoying some dignity or carrying out an office or function in the Church, if he or she commits the delict mentioned above, is to be punished with an appropriate penalty according to the gravity of the delict.

### Observations:

- The SST has raised the age of the minor from sixteen (in CIC/1983) to eighteen for the crime of the sexual abuse of minors.
- The latest texts in *Pascite gregem Dei* and *Vocare peccatores* do not give a precise age of the minor, which is eighteen, as stipulated in SST. However, CIC/1983 can. 97§1 and CCEO can. 909§1 clearly states that a person who has completed the eighteenth year of age has reached majority; below this age, a person is a minor.
- The texts in the Codes do not state that it is a delict reserved to the Dicastery for the Doctrine of Faith as in SST.
- The expression "equivalent to minor" in SST/2010 art. 10 is dropped in *Pascite gregem Dei* and *Vocare peccatores* as well as in SST/2021. However, CIC/1983 can. 99 and CCEO can. 909 §3 legislates that one who habitually lacks the use of reason is not responsible for self and is equated with an infant. A minor before the completion of the seventh year is called an infant in the Codes (CIC can. 97§2, CCEO can. 909§2).
- **In *Pascite gregem Dei* the expression used is "those who habitually have the imperfect use of reason", while in *Vocare peccatores* it is, "those who habitually lack the use of reason."**
- ***Pascite gregem Dei* uses the expression "an offence against the sixth commandment of the Decalogue," while *Vocare peccatores* uses, "a delict against chastity".**

### 1.2 Sexual Abuse of Vulnerable Adults

- **CIC/1983, CCEO and SST/2001:** No reference is found to the concept of vulnerable persons with regard to the delict of sexual abuse.

- **SST/2010 art. 6:** added a new specification: “in this case, a person who habitually has the imperfect use of reason is to be considered equivalent to a minor”. It can be seen as a ‘narrow’ use of the concept of “vulnerable adult”.
- *As a Loving Mother*, Pope Francis’ *Motu proprio* of 4 June 2016: The term vulnerable adults is used without any definition.
- *Vos estis lux mundi/2019 art. 1 §2, b* presented a ‘broad’ expression of the concept. In this document, “vulnerable person” is described as “any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally limits their ability to understand or to want or otherwise resist the offence.” The reference to the deprivation of personal liberty which limits the ability to resist the offence clearly indicates a vulnerability due to the ‘power-imbalance’ between the abusers and the victims, like formators and candidates in the formation houses, parish priest and parishioners, clerics and religious women, etc.
- *Vos estis lux mundi/2019 art.1, a, i:* Delicts against the sixth commandment of the Decalogue consisted also “forcing someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts”. This delict already existed in CIC/1983 can. 1395 §2.

Though the term “vulnerable adult” is not used as such in the revised norms of the Codes, the concept is present in the following canons.

- *Pascite gregem Dei can. 1398 §1,1°:* A cleric is to be punished with deprivation of office and with other just penalties, not excluding, where the case calls for it, dismissal from the clerical state, if he commits an offence against the sixth commandment of the Decalogue with a minor or with a person who habitually has an imperfect use of reason **or with one to whom the law recognises equal protection.**

Here the provision of equal protection in law refers to the definition of vulnerable adults in *Vos estis lux mundi*.

- *Pascite gregem Dei can. 1398 §2:* A member of an institute of consecrated life or of a society of apostolic life, or any one of the faithful who enjoys dignity or performs an office or function in the Church, who commits the above-mentioned offence is to be

punished according to the provision of can. 1336 §§2-4, with the addition of other penalties according to the gravity of the offence.

- *Vocare peccatores* can. 1453§5,1<sup>o</sup>: A cleric, who commits a delict against chastity with a minor or with a person who habitually lacks the use of reason, **or with someone for whom the law recognizes an equal protection**, is to be punished with privation of office and other appropriate penalties, not excluding deposition if the case so warrants.
- *Vocare peccatores* can. 1453 §7: A religious or member of a society of apostolic life in the manner of religious and any lay person enjoying some dignity or carrying out an office or function in the Church, if he or she commits the delict mentioned above, is to be punished with an appropriate penalty according to the gravity of the delict.
- *Vos estis lux mundi*/2023, art. 1, a, ii: A delict against the sixth commandment of the Decalogue committed with a minor or with a person who habitually has imperfect use of reason or with a **vulnerable adult**.

*Vos estis lux mundi*/2019 art. 1 §2, b had used the term "vulnerable person" instead of "vulnerable adult".

### Observations

- In *Pascite gregem Dei* and *Vocare peccatores*, the category of vulnerable is extended to adults who can be the victims of abuse of power.
- The expression, "with someone for whom **the law** recognizes an equal protection" refers to the law in *Vos estis lux mundi* regarding vulnerable adults.
- *Vademecum* reminds us that the definition of vulnerable persons in *Vos estis lux mundi* includes other situations than those about the competence of the DDF, which remains limited to minors under eighteen years of age and to those who "habitually have an imperfect use of reason". Other situations outside of these cases are handled by other competent Dicasteries (cf. *Vos estis lux mundi* art. 6-7§1).

### 1.3 Child Pornography

- **CIC/83 and CCEO**: The delict of child pornography is not explicitly mentioned.
- **SST/2001** does not speak directly of child pornography as a delict.

- **SST/2010 art. 6§1, 2°**: Child pornography is explicitly mentioned as a delict: “The acquisition, possession or distribution by a cleric of pornographic images of **minors under the age of fourteen**, for purposes of sexual gratification, by whatever means or using whatever technology” is a delict reserved to the CDF.
- *Rescriptum ex Audientia*, of Pope Francis, 3 December 2019<sup>4</sup>: It replaced art. 6 §1, 2° of SST/2010 in its entirety by the following text: “The acquisition, possession or distribution by a cleric of pornographic images of **minors under the age of eighteen**, for purposes of sexual gratification, by whatever means or using whatever technology.” This rescript came to effect on 1 January 2020 and has increased the age limit to eighteen years for the crime of pornography of minors committed by the clerics.
- *Vos estis lux mundi/2019 art. 1, iii*: It included “exhibition” among the delicts.
- **SST/2021 art. 6, 2°**: The acquisition, possession, **exhibition**, or distribution, for purposes of sexual gratification or **profit**, of pornographic images of minors **under the age of eighteen years**, in any manner and by any means whatsoever, by a cleric are reserved to the judgment of the DDF.
- *Pascite gregem Dei can. 1398§ 1, 3°*: A cleric is to be punished with deprivation of office and with other just penalties, not excluding, where the case calls for it, dismissal from the clerical state, if he **immorally** acquires, retains, exhibits or distributes, in whatever manner and by whatever technology, pornographic images of minors **or of persons who habitually have an imperfect use of reason**.
- *Pascite gregem Dei can. 1398 §2*: A member of an institute of consecrated life or of a society of apostolic life, or any one of the faithful who enjoys a dignity or performs an office or function in the Church, who commits the above-mentioned offences is to be punished according to the provision of can. 1336 §§ 2-4, with the addition of other penalties according to the gravity of the offence.
- *Vocare peccatores can. 1453 §5, 3°*: A cleric, who, **contrary to good morals**, obtains, keeps, shows, or distributes, in any way and by

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<sup>4</sup>[https://www.vatican.va/roman\\_curia/secretariat\\_state/2019/documents/rc-seg-st-20191203\\_rescriptum\\_en.html](https://www.vatican.va/roman_curia/secretariat_state/2019/documents/rc-seg-st-20191203_rescriptum_en.html) (accessed on 03.12.2023).

any means, pornographic images of minors or of persons who habitually lack the use of reason, is to be punished with privation of office and other appropriate penalties, not excluding deposition if the case so warrants.

- ***Vocare peccatores can. 1453 §7***: A religious or member of a society of apostolic life in the manner of religious and any lay person enjoying some dignity or carrying out an office or function in the Church, if he or she commits a delict mentioned above, is to be punished with an appropriate penalty according to the gravity of the delict.

#### **1.4 Grooming or Inducing a Minor or Vulnerable Adult to Expose Pornographically**

This delict is completely new in the revised texts. "Grooming" generally refers to the practice of building relationships with children or vulnerable persons to exploit them. A specific reading of this norm suggests that only grooming relating to the production of pornography is criminalized in the Codes.

- ***Vos estis lux mundi/2019 art.1, a, iii***: Delicts against the sixth commandment of the Decalogue consist also "the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions".
- ***Pascite gregem Dei can. 1398§ 1, 2°***: A cleric is to be punished with deprivation of office and with other just penalties, not excluding, where the case calls for it, dismissal from the clerical state if he grooms or induces a minor or a person who habitually has an imperfect use of reason or one to whom the law recognises equal protection to expose himself or herself pornographically or to take part in pornographic exhibitions, whether real or simulated.
- ***Vocare peccatores can. 1453 §5, 2°***: A cleric, who grooms or induces a minor or a person who habitually lacks the use of reason, or a person for whom the law recognizes equal protection, to expose himself or herself pornographically or to participate in pornographic exhibitions, whether real or simulated is to be punished with privation of office and other appropriate penalties, not excluding deposition if the case so warrants.

#### **1.5 Canonical Procedure**

**Reporting: *Vos estis lux mundi/2023 art. 3***: Except for when a cleric learns of information during the exercise of ministry in the internal

forum, whenever a cleric or a member of an Institute of Consecrated Life or of a Society of Apostolic Life learns, or has well-founded motives to believe, that one of the delicts under discussion has been committed, that person is **obliged to report it promptly** to the local Ordinary where the events are said to have occurred. Further, any person, in particular the lay faithful who serve in offices or exercise ministries in the Church, **can submit a report** concerning these delicts by any appropriate means. (Details of Reporting are found in *Vos estis lux mundi*).

**Preliminary Investigation:** Whenever the Ordinary receives a report of sexual abuse of a minor or vulnerable adult, 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 Ordinary is to communicate the matter to the DDF. The Dicastery, unless it calls the case to itself due to particular circumstances, will direct the Ordinary as to how to proceed further.

**Penal Procedure:** *Vademecum* provides a detailed account of the possible penal procedures. By law, three penal procedures are possible: a judicial penal process; an extrajudicial penal process; or the procedure introduced by art. 26 of SST (*Vademecum* n. 85ff).

The procedure provided for in art. 26 SST is reserved for the most grave cases, and concludes with a direct decision of the Supreme Pontiff and requires that, even though the commission of the delict is manifestly evident, the accused be guaranteed the right of self-defence.

The extrajudicial penal process is carried out with slightly different formalities according to the two Codes. (For details, see *Vademecum* n.130ff).

For the judicial penal process, the relative provisions of the law should be consulted, either in the respective Codes or in articles 9, 10 §2, 11-18, 26-29 SST. According to articles 10 §1 and 16 §3 SST, a judicial penal process can be carried out within the DDF or can be entrusted to a lower tribunal. The judicial penal process does not require a double-conforming sentence; consequently, a decision rendered by a sentence in an eventual second instance becomes *res iudicata* (cf. art. 18 SST). Such a definitive sentence can be challenged only by a *restitutio in integrum*, provided elements are produced that make its injustice clear (cf. canons 1645 CIC, 1326 CCEO), or by a complaint of nullity (cf. canons 1619ff. CIC, 1302ff. CCEO).

**Appeal and Recourse:** Those who enjoy the right of appeal against a sentence of first instance include not only the accused party who considers himself unjustly aggrieved by the sentence, but also the Promoter of Justice of the DDF (cf. art. 16 §2 SST).

The law provides different procedures for recourse, according to the two Codes. (For details, see *Vademecum* n. 151ff). According to CIC canon 1734, whoever intends to present a recourse against a penal decree must first seek its emendation or revocation from the author (the Ordinary or his delegate) within the peremptory time limit of ten useful days from the legitimate notification of the decree. The CCEO provides a simpler procedure than that of the CIC. In fact, according to the norm of CCEO canon 1487 §1 the one making recourse must apply exclusively to the *Congresso* of the DDF within ten useful days from the decree's notification.

**Prescription:** SST/2021 art. 8: Criminal action concerning delicts reserved to the DDF is extinguished by prescription after twenty years. In the case of the delict of sexual abuse of minor, prescription begins on the day the minor reaches the age of eighteen. This special way of considering the prescription is not mentioned in the revised texts.

**Subjects of the delict:** While the canons in the past had focused on the punishments relating to abuse by clerics (bishops, priests and deacons), the revised canons now explicitly punish a religious or member of a society of apostolic life in the manner of religious and any lay person enjoying some dignity or carrying out an office or function in the Church as well for sexual abuse of minors and vulnerable adults.

**Penalty:** For clerics, the penalty for committing the delicts under discussion is deprivation of office and other just penalties, not excluding, where the case calls for it, dismissal from the clerical state. For a religious or member of a society of apostolic life in the manner of religious and any lay person enjoying some dignity or carrying out an office or function in the Church, the penalty is in CIC, "according to the provision of CIC can. 1336 §§2-4, with the addition of other penalties according to the gravity of the offence" and in CCEO, "an appropriate penalty according to the gravity of the delict."

## 2. Pastoral Observations

### 2.1. Clarity about the Concept of Vulnerable Adult

The term vulnerable adult appeared in Pope Francis' *Motu proprio* "As a Loving Mother" on 4 June 2016. In *Vos estis lux mundi*/2019, the term

was a vulnerable person. In *Vos estis lux mundi*/2023, it is vulnerable adult. In *Pascite gregem Dei* and *Vocare peccatores*, the term is not used, though the concept is present in the norms.

In the revised norms regarding sexual abuse (*Pascite gregem Dei* can. 1398 §1,1° and *Vocare peccatores* can. 1453 §5,1°), the law recognized two distinct categories of vulnerable adults: “a person who habitually has an imperfect use of reason” and “one to whom the law recognises equal protection.” The first category can be considered as a “narrow” concept of the term vulnerable adult, and the second category a “broad” concept of the same term.<sup>5</sup>

### 2.1.1 ‘Narrow’ concept of the term

In the revised norms, a parity is established between the abuse of mentally disabled people and that of the minors. Thus, the definition of minor in the new norm includes those who habitually lack the use of reason. It reflects the norm of CIC/83 can. 99, which legislates that one who habitually lacks the use of reason is not responsible for self and is equated with an infant. Those persons who habitually lack the use of reason, though they are over the age of eighteen, are considered equivalent to a minor for the purpose of judicial or administrative determination of clerical sexual abuse in a given situation. This ‘narrow’ concept of vulnerable adults does not create any legal issue.

### 2.1.2 ‘Broad’ concept of the term

According to Ed Condon, “the need for an expanded legal category of vulnerable adult was widely viewed as necessary following a range of scandals involving a disparity of power and spiritual authority by abusers as a means of coercing adult victims.”<sup>6</sup> For example, the power imbalance between a pastor and a parishioner makes the parishioner, who has less power, the vulnerable to victimization. *Vos estis lux mundi* contains a far broader definition, calling a vulnerable adult “any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offense.” This new formulation includes a range of cases not previously covered by the canon law. Coercive sexual relationships between, for example, formators and seminarians, priests and parishioners, priests and

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<sup>5</sup> Cf. Ed Condon, “Can anyone at the Vatican agree on who’s a ‘vulnerable adult?’”, April 14, 2023, found on <https://www.pillaratholic.com/p/can-anyone-at-the-vatican-agree-on> (accessed on 03.12.2023).

<sup>6</sup> Ed Condon, “Can anyone at the Vatican agree on who’s a ‘vulnerable adult?’” ...

women religious have featured much in the debate over recent scandals. The definition of vulnerable adult now includes how people can be vulnerable due to factors other than lack of reason.<sup>7</sup>

This new definition has not been welcomed by all. Some have noted that many problematic situations involving clerical sexual misconduct are not analogous to child sexual abuse and, while they needed to be dealt with, should be kept apart from the most serious kinds of abuse.<sup>8</sup> When this broader definition is placed within the context of clericalism, often cited as a major contributing factor to clerical sexual abuse, it would be hard to conceive of a sexual relationship involving a priest which couldn't be argued to rise to the level of abusive.<sup>9</sup> For Fr. Hans Zollner, SJ, director of the safeguarding institute of the Pontifical Gregorian University and advisor to Pope Francis, the definition was "not helpful" because it is "so broad" as to include a wide range of people.<sup>10</sup>

According to Archbishop Charles Scicluna, the law was not creating a juridic equivalence between vulnerable adults and "a mentally disabled person or a minor," but that they have been granted equal protection by the law as a separate category. According to him, the Pope has effectively created a new class of crime for which the bishops will need to develop particular law, diocesan policies, and tribunal practices, and possibly dedicated staff.<sup>11</sup> Such cases of clerical sexual misconduct with adults have usually been treated as moral failure, but not canonical crimes.

If we follow the definition of vulnerable adult in *Vos estis lux mundi*, to my mind, the religious sisters could claim to be vulnerable in their relationship with the priests and bishops due to the power imbalance in the present ecclesiastical and social situation. The law states that in case they are abused, they should be given equal protection as to the

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<sup>7</sup> See, Ed Condon, "Pope Francis issues new definition of 'vulnerable' adult," 29 March 2019, <https://www.catholicnewsagency.com/news/40912/analysis-pope-francis-issues-new-definition-of-vulnerable-adult>.

<sup>8</sup> See, Ed Condon, "Pope Francis issues new definition of 'vulnerable' adult."

<sup>9</sup> Ed Condon, "Pope Francis issues new definition of 'vulnerable' adult."

<sup>10</sup> Cf. <https://awakemilwaukee.org/2023/03/07/courageous-conversation-in-discussion-led-by-survivors-vatican-advisor-hans-zollner-sj-weighs-in-on-abuse-in-the-church/> (accessed on 03.12.2023).

<sup>11</sup> Reported in <https://www.pillarcatholic.com/p/local-bishops-must-prosecute-abuse> (accessed on 03.12.2023).

minors. If a religious sister denounces such a case of abuse, what provisions are there in canon law to protect her?

In fact, the vulnerable adults are vulnerable not only at the moment of abuse, but also in the process of seeking justice for the crime suffered. Thus, they become doubly vulnerable. Should our religious and children seek the support of any NGOs to get justice done within the Church? I sincerely believe that after an effective preliminary investigation, if the ecclesiastical authority is convinced of the semblance of truth in the complaint, all legal assistance should be provided to the victims, minors and vulnerable adults. For example, if a religious sister is abused by clerics, her religious congregation should do everything to protect her and to provide her with legal assistance, even in the civil forum.

## **2.2 Peculiar Nature of Relationship among the Faithful, Clerics and Ecclesiastical Authority**

Compared to the civil juridical order, the special type of spiritual/moral/hierarchical relationship existing among the faithful, clerics and the ecclesiastical authority should be taken into consideration while dealing with the abuse of minors and vulnerable adults. When one of the faithful (minor or vulnerable) is abused by a cleric, the most trusted spiritual relationship is broken. According to *Vos estis lux mundi*, these crimes “betray the trust of the faithful”. The faithful are asked to denounce their spiritual father. Moreover, for justice, the victim has to approach a bishop who has a paternal and hierarchical relationship with the accused cleric. Further, the members of the tribunal (only priests can be members of this college of tribunal<sup>12</sup>) have a fraternal relationship with the accused cleric. We cannot discuss the matter as if the victims (often laity or vulnerable adults, including religious) and the accused (clergy) are on equal levels. The accused (clergy) depends on the judge (bishop) even for his sustenance. A victim, if a religious, depends for everything on the ecclesiastical

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<sup>12</sup> SST/21 art. 13: In all Tribunals dealing with the cases which are mentioned in these Norms, the following are able to validly fulfil the functions of:

1° Judge and Promoter of Justice, only priests possessing a doctoral degree or at least a license in canon law, outstanding in good morals, prudence, and expertise in the law;

2° Notary and Chancellor, only priests with a blameless reputation and above all suspicion;

3° Advocate and Procurator, members of the faithful possessing a doctoral degree or at least a license in canon law, who are to be admitted by the presiding judge of the college.

system. This special type of spiritual, moral and hierarchical relationship existing among the faithful, clerics and the ecclesiastical authority brings with it special challenges in the judicial procedure of an abuse case of minor or vulnerable by a cleric.

- The victims will be reluctant to denounce their abusers-pastors, fearing also the reaction of the community.
- The abusers - clerics may use their power and influence to silence the victims.
- The bishop may try to cover up the cases of his priests.
- As the college of tribunal is composed only of priests, the victims may not have much trust in the impartiality of the ecclesiastical tribunal and, therefore, may prefer to seek justice in the civil tribunal.

In order to overcome the diffidence the faithful have of the ecclesiastical judicial system, provisions that regulate and facilitate the participation of lay experts in investigations and in the different degrees of judgment of canonical processes concerning sexual and/or power abuse should be established. Such a possibility is foreseen in the SST Norms as an exception.<sup>13</sup> But if it could be made obligatory, then the credibility of the ecclesiastical judicial system would be higher. At least, when the victim is a girl or a religious sister, the tribunal should consist of a lady/a religious sister.

### **2.3 Parallel Ecclesiastical and Civil Judicial Procedures**

Since the sexual abuse of minors and vulnerable adults is a punishable crime under both civil and ecclesiastical laws, and has to be obligatorily reported to the civil authority in many of the countries, there can be many procedural difficulties. *Vademecum* n. 27 clearly states that the ecclesiastical investigation should be carried out with respect to the civil laws of each State. In this regard, the main question is whether the ecclesiastical authority should begin an independent investigation while an investigation of the same case is undertaken by the civil authority, or should wait for the final judgement of the civil court? According to *Vademecum* n. 26, "the preliminary canonical investigation must be carried out independently of any corresponding investigation by the civil authorities. In those cases where State legislation prohibits investigations parallel to its own, the ecclesiastical authorities should

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<sup>13</sup> SST/21 art. 14: "In individual cases, the DDF is able to grant dispensations from the requirement of priesthood."

refrain from initiating the preliminary investigation and report the accusation to the DDF, including any useful documentation. In cases where it seems appropriate to await the conclusion of the civil investigations in order to acquire their results, or for other reasons, the Ordinary or Hierarch would do well to seek the advice of the DDF in this regard.”

Another question that emerges in this regard is whether the ecclesiastical tribunal can proceed on the basis of the judgment of the civil court in an abuse case or not. According to *Vademecum* n. 36, “due care must be taken by those who must carry out the preliminary investigation to examine the civil investigation since the criteria used in the latter (with regard, for example, to terms of prescription, the typology of the crime, the age of the victim, etc.) can vary significantly with respect to the norms of canon law. In these situations too, it can be advisable, in case of doubt, to consult with the DDF.” If the findings and judgment of the tribunals are different, the case gets more complicated. If an accused, who is acquitted by the civil court, is punished by the ecclesiastical tribunal, the accused can take the matter to the civil tribunal and the ecclesiastical judge may have to defend his judgment in the civil tribunal. On the other hand, if a person, who is punished by the civil court, is acquitted by the ecclesiastical tribunal, the legal procedure gets more complicated.

Another related question is regarding the Bishop’s obligation to report the abuse case to the civil authority. According to *Vademecum* n. 48, in this regard, two principles apply: a) respect for the laws of the State; and b) respect for the desire of the alleged victim, provided that this is not contrary to civil legislation. Alleged victims should be encouraged to exercise their duties and rights vis-à-vis the State authorities, taking care to document that this encouragement took place and to avoid any form of dissuasion with regard to the alleged victim. The conflict emerges when the victim and his/her family do not want the ecclesiastical authority to report the case to the police but the State laws demand it. *Vademecum* continues to state that (n. 49) “when the laws of the State require the Ordinary or Hierarch to report a *notitia de delicto*, he must do so, even if it is expected that on the basis of State laws no action will be taken (for example, in cases where the statute of limitations has expired or the definition of the crime may vary).

Often, the faithful reveal a case of sexual abuse to their priest, seeking spiritual consolation and guidance in their agony, without being aware of the priest’s legal obligation to report the case to the civil authority,

as stipulated by the State law. When the priest informs them that he has the obligation to report the case to the civil authority, they feel betrayed by the priest, as the reporting will surely affect the reputation of the victim. It is not at all easy to handle this moral dilemma.

## Conclusion

As Pope Francis remarks, we should be able to turn the sad experience of the sexual abuse crisis in the Church into "an opportunity for awareness and purification".<sup>14</sup> The textual study of the norms regarding the sexual abuse of minors and vulnerable adults in the revised penal law section of the Codes and the pastoral observations presented above reveal that the current norms are the result of decades' of commitment and legal efforts. Though the delict of abuse of a minor by a cleric was mentioned in CIC/1983, more specific norms were necessary due to the alarming number of cases reported in the 1990s. The SST Norms was the first legislative response to the crisis. The jurisprudence in the following years has produced the latest norms in *Pascite gregem Dei* and *Vocare peccatores*. The present legislation may need further clarification and improvement in the light of concrete cases and applications. As the *Vademecum* states, "only a profound knowledge of the law and its aims can render due service to truth and justice, which are especially to be sought in matters of *graviora delicta* by reason of the deep wounds they inflict upon ecclesial communion."

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<sup>14</sup> Pope Francis, "Introduction of His Holiness Pope Francis" at the Meeting "The Protection of Minors in the Church" Vatican, 21 February 2019. Found on [https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco\\_20190221\\_incontro-protezioneminori-apertura.html](https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190221_incontro-protezioneminori-apertura.html) (Accessed on 03.12.2023).