

PRIMACY OF JUSTICE IN THE REVISED PENAL SANCTIONS IN THE CHURCH

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Abstract

This article delves into the revised Book VI of the CIC 1983 and the pertinent penal canons of the CCEO, with a particular focus on the highlighted primacy of justice within the Church's updated penal system. In light of Pope Francis' documents, *Pascite gregem Dei* and *Vocare peccatores*, the revision emphasizes the obligation of Church leaders to uphold justice, prioritizing it in the implementation of penal sanctions. This transformation is reflected in the reordering of the threefold purposes of penalties: the restoration of justice, the reformation of the offender, and the reparation of scandal, with justice taking precedence. The article examines how this revision marks a shift from discretionary to mandatory penalties, from indeterminate to determinate penalties, and restricts the application of *latae sententiae* excommunications—efforts aimed at ensuring that justice is upheld. It elucidates how the revised penal system within the Catholic Church restores justice through revised Censure, Expiatory Penalties, and Penal Remedies, while also highlighting amendments in the canons concerning prescription. Additionally, the article explores the vital importance of a fair process and the right of defence for the accused, emphasizing that justice must be harmonized with mercy and pastoral charity, ultimately seeking the salvation of souls.

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Introduction

Following the 2009 initiative spearheaded by Pope Benedict XVI, a significant revision of Book VI of *CIC* 1983 culminated with the promulgation of Pope Francis' Apostolic Constitution *Pascite gregem Dei*¹ ("Tend the Flock of God" – 1 Peter 5:2) on Pentecost Sunday, 23 May 2021 and CCEO through Motu proprio *Vocare peccatores* on 20 March 2023.² This revision, reflecting the Church's ongoing commitment to the care of souls, introduced substantial modifications to the Church's penal norms. The revised Book VI of the Code of Canon Law came into effect on 8 December 2021, the Solemnity of the Immaculate Conception.

One important addition in the revised Book VI is the responsibility of the head of a Church to safeguard justice. "The one who is at the head of a Church must safeguard and promote the good of the community itself and of each of Christ's faithful, through pastoral charity, example of life, advice and exhortation and, if necessary, also through the imposition or declaration of penalties, in accordance with the provisions of the law, which are always to be applied with canonical equity and having in mind the restoration of justice, the reform of the offender, and the repair of scandal" (c. 1311 §2). This is a newly added paragraph in c. 1311 of the revised Book VI. An essential part of their *pastoral munus* is the obligation to charity to the Church, the Christian community, injured parties, and wrongdoers who need mercy and correction. Charity is, therefore, necessarily connected to disciplinary sanctions required by justice. Past failures to appreciate the obligations of charity and justice have led to the toleration of immoral conduct. Therefore, this article aims to delve into the specific modifications or amendments introduced in the revised Book VI of *CIC* 1983 and the relevant canons in CCEO, focusing on how these

¹ FRANCIS, Apostolic Constitution *Pascite gregem Dei* (23.05.2021), in *Communicationes* 53 (2021), 9; English transl. in https://www.vatican.va/content/francesco/en/apost_constitutions/documents/papa-francesco_costituzione-ap_20210523_pascite-gregem-dei.html

² FRANCIS, Apostolic Letter Motu Proprio *Vocare peccatores* (20.03.2023), in https://www.vatican.va/content/francesco/la/motu_proprio/documents/20230320-motu-proprio-vocare-peccatores.html For the English text, SEBASTIAN PAPPAYAPILLY (ed.), *A Compendium of Revised Norms of Corpus Iuris Canonici*, Dharmaram Publications, Bengaluru 2023, 36-59.

revisions emphasise the primacy of justice within the Church, especially in its penal system.

1. Justice

The Latin term “*iustitia*” means justice, innocence, righteousness, rectitude, moral integrity, fairness, *etc.*³ The delict constitutes a break in the balance of justice within the ecclesial body, which is a clear reflection of the break in the relationship with God, “the just one”. Pope Francis often uses the term “*iustitia*” in the context of a prophetic denunciation of the existing order and the socio-political consensus.⁴ CIC 1917 often used the term “*vindicatio*.” Since the word “*vindicatio*” refers to vengeance in its negative moral aspect, CIC 1983 used the term “*restitutio*.”⁵ *Restitutio* consists of putting someone back into the possession or dominion of what is his.⁶ Restitution or restoration is an extraordinary remedy of law by which a party, grievously damaged or injured, is restored by the authority of the judge to his original condition.⁷ The Catechism of the Catholic Church defines justice as the preservation of “our neighbour’s rights and render him[/her] what is his[/her] due” (CCC 2407). The administration of justice involves retribution in the form of a prescribed punishment.

2. Penal Law as a Manifestation of Justice

Penal law is an occasion for justice in the Church, a justice that leads to a conversion of heart, which draws one to eternal communion with God. In *Misericordiae vultus*, Pope Francis explains that the mercy of God does not deny justice. Those who do wrong must pay the price. Nonetheless, divine justice is the beginning of conversion, which leads to love and new life.⁸ St Thomas Aquinas states, “*misericordia sine iustitia dissolution est; iustitia sine misericordia crudelitas est.*” The revised

³ Cf. LEO F. STELTEN, *Dictionary of Ecclesiastical Latin*, Hendrickson Publishers, Massachusetts 1995, 144.

⁴ Cf. MASSIMO FAGGIOLI, “Mercy, Justice, and Law in Francis’ Interpretation of Vatican II,” in *CLSA Proceedings* 79 (2017) 29: In the Apostolic Exhortation *Evangelii Gaudium*, the Church’s role in the fight for social justice is a recurring term (cf. EG 184, 194, 201, 204, 219, 221).

⁵ Cf. ANTONIO CALABRESE, *Diritto penale canonico*, Libreria Editrice Vaticana, Città del Vaticano 1996, 102.

⁶ Cf. EDUARDO BAURA, “L’attività sanzionatoria della chiesa: note sull’operatività della finalità della pena,” in *Ephemerides Iuris Canonici* 59 (2019) 609.

⁷ Cf. JOSE PULICKAL, *A Dictionary of Canon Law*, Biblia Publications, Trissur 2004, 347.

⁸ Cf. JOHN ANTHONY RENKEN, “Penal Law: A Realization of the *Misericordiae Vultus Ecclesiae*,” in *Studia Canonica* 50 (2016) 104.

Book VI has made the penal law a more demanding instrument with respect to the principles that influence the life of the community and the imposition of the punishment. In this regard, the revision has made some changes that insist on the pursuit of justice. Canon 1311 §2 of *CIC* 1983 seems to have resumed the spirit present in c. 2214 §2 of *CIC* 1917, which is recognized as the source of c. 1341 of *CIC* 1983. The revised penal law clearly exhibits that justice requires, in some cases, the recourse to penal action. In the Apostolic Constitution *Pascite gregem Dei*, Pope Francis recalls:

In the past, great damage was done by a failure to appreciate the close relationship existing in the Church between the exercise of charity and recourse — where circumstances and justice so require — to disciplinary sanctions. This manner of thinking — as experience has taught — could lead to tolerating immoral conduct, for which mere exhortations or suggestions are insufficient remedies. This situation often brings with it the danger that, over time, such conduct may become entrenched, making correction more difficult and, in many cases, creating scandal and confusion among the faithful. For this reason, it becomes necessary for Bishops and superiors to inflict penalties.⁹

However, the penalty is read as an act of pastoral charity and not as an act of revenge or retribution for a delict. In this sense, in the Apostolic Constitution *Pascite gregem Dei*, which promulgated the revised Book VI, Pope Francis states that charity thus demands that the Church's pastors resort to the penal system whenever it is required, keeping in mind the three aims that make it necessary in the ecclesial community: the restoration of the demands of justice, the correction of the guilty party and the repair of scandals. To reflect this charity in action, justice must be implemented according to the law (c. 221 of *CIC* 1983 and c. 24 of *CCEO*), following the canonical equity (c. 1752 of *CIC* 1983 and c. 1400 of *CCEO*) and the three ends of punishment: the restoration of justice, the correction of the offender and the reparation of the scandal.

3. Restoration of Justice as a Purpose of Penalty

Canon 1341 of *CIC* 1983 (c. 1402 §1 of *CCEO*) is one of the four canons in *ius vigens* that directly address all three canonical purposes or ends

⁹ FRANCIS, Apostolic Constitution *Pascite gregem Dei* (23 May 2021), in https://www.vatican.va/content/francesco/en/apost_constitutions/documents/papa-francesco_costituzione-ap_20210523_pascite-gregem-dei.html

of the penalties.¹⁰ The threefold ends are *restitutio iustitiae* (restoration of justice), *emendatio rei* (reformation of the offender) and *reparatio scandali* (reparation of the scandal). They are the parameters for guiding the judgement.¹¹ Rotal jurisprudence also posits that the Church imposes penalties on the Christian faithful for these three ends.¹² The threefold ends highlight the phenomenon of human and social recovery. They do not constitute different compartments, but each absorbs the other and permeates it so that each end cannot be achieved without the others.¹³ They are the three poles around which all aspects of canonical penal law must turn. If one aspect is being neglected, then the penal law is not being applied correctly.¹⁴

The threefold ends affirm the pastoral character of the penal law since they help to achieve *salus animarum*.¹⁵ *Coram* Colagiovanni indicated, "With all penalties, the ultimate end to be achieved is the salvation of souls."¹⁶ It is ultimately a matter of favouring the salvation of the souls of all those concerned, *i.e.*, the victims, the offenders and the members of the community.¹⁷ There are two types of penalties: medicinal (censures) and expiatory (c. 1312 §1). Whereas the primary purpose of a medicinal penalty is to reform the offender, the expiatory penalty envisions restoring justice and repairing the scandal.¹⁸ While the

¹⁰ The other three canons are cc. 695 §1; 1311 §2 and 1343.

¹¹ Cf. JUAN IGNACIO ARRIETA, "La funzione pastorale del diritto penale," in *Ius Ecclesiae* 34 (2022) 60.

¹² Cf. *Coram* COLAGIOVANNI, 14 June 1994, in *Monitor Ecclesiasticus* 122 (1997) 91; RONNY E. JENKINS, "Jurisprudence in Penal Cases: Select Themes from the Judicial Doctrine of the Tribunal of the Roman Rota," in *CLSA Proceedings* 67 (2005) 101.

¹³ Cf. GIUSEPPE DI MATTIA, "Diritto alla difesa e procedura penale amministrativa in diritto canonico," in *Fidelium Iura* 3 (1993) 328.

¹⁴ Cf. RONNY E. JENKINS, "Jurisprudence in Penal Cases: Select Themes from the Judicial Doctrine of the Tribunal of the Roman rota," in *CLSA Proceedings* 67 (2005) 101.

¹⁵ Cf. EDUARDO BAURA, "L'attività sanzionatoria della chiesa: note sull'operatività della finalità della pena," 613.

¹⁶ *Coram* COLAGIOVANNI, 14 June 1994, in *Monitor Ecclesiasticus* 122 (1997) 91.

¹⁷ Cf. EDUARDO BAURA, "L'attività sanzionatoria della chiesa: note sull'operatività della finalità della pena," 613.

¹⁸ Cf. THOMAS J. GREEN, "Commentary on Can. 1312," in JOHN P. BEAL – JAMES A. CORIDEN – THOMAS J. GREEN (eds), *New Commentary on the Code of Canon Law*, 1534; VELASIO DE PAOLIS, "Commentary on Can. 1341," 365-366; *Coram* COLAGIOVANNI, 14 June 1994, 91; F.C. EASTON, "Commentary on Can. 1401 of CCEO 1990," in JOHN D. FARIS – JOBE ABBASS (eds), *A Practical Commentary to the Code of Canons of the Eastern Churches*, Vol. 2, Librairie Wilson & Lafleur inc., Chambly 2019, 2519; CCEO 1990 does not contrast medicinal and expiatory penalties.

restoration of justice and the repair of scandal are proper to the Church, the reform of the offender is proper to the individual.¹⁹

3.1. Primacy of Justice Among the Three Purposes of Penalty

The newly added paragraph two of c. 1311 and the revised c. 1341 reordered the three ends of penalties such that the restoration of justice (*restitutio iustitiae*) is placed before the correction of the offender (*emendatio rei*) and the reparation of the scandal/harm (*reparatio scandali*) that was mentioned first in the old c. 1341. In the old c. 1341, the order was i) reparation of the scandal, ii) restoration of justice, iii) reformation of the offender. This change and the primacy of justice among the three ends of penalties highlight the significance of resorting to the penal system for attaining justice. The canonists have different opinions about this reordering. Geraldina Boni opines that the relegation of *reparatio scandali* to the last position in no way implies trivializing or diminishing it, as the scandal disturbs faith itself and *communio*. Moreover, the revised Book VI mentions the scandal more often than the old Book VI, underscoring the need to repair it.²⁰ Nevertheless, according to Bruno Fabio Pighin, the order of precedence of the ends in the revised c. 1341 has its own logic, depending on at least four parameters: the causal relationship, the range of action, the timeliness, and the effectiveness of the penalty.²¹ For Brian T. Austin, this reordering strongly emphasizes that although the penal system rightly remains *ultima ratio*, there are times when justice simply demands it.²² However, the reordering of the threefold purpose evidences a shift from the offender to the victim as a focal point for penal law. It is a response to the need for justice within the community.²³

3.2. Restoration of Justice as the First Purpose

While in the old Book VI, the terms "*restitutio iustitiae*" were used only twice (old c. 1333 §4; 1341 of CIC 1983), in the revised Book VI, they

¹⁹ Cf. DAVID L. DEIBEL, "Canon 1341: Pastoral Principles within the Penal Process," in PATRICIA M. DUGAN (ed.), *Towards Future Developments in Penal Law: U.S. Theory and Practice*, Wilson and Lafleur, Montreal 2010, 93.

²⁰ Cf. GERALDINA BONI, "Il Libro VI De sanctionibus poenalibus in Ecclesia: novità e qualche spigolatura critica," in *Stato, chiese e pluralismo confessionale* (2022) 29, in <https://doi.org/10.54103/1971-8543/18051>.

²¹ Cf. BRUNO FABIO PIGHIN, *Il nuovo sistema penale della chiesa*, Marcianum Press, Venezia 2021, 229.

²² Cf. BRIAN T. AUSTIN, "The Revised Book VI, Part I: Selected Norms and Commentary," in *The Jurist* 77 (2021) 333.

²³ Cf. JOHN PAUL KIMES, "Reclaiming 'Pastoral': *Pascite gregem Dei* and Its Vision of Penal Law," in *The Jurist* 77 (2021) 284-285.

are used six times (revised cc. 1311 §2, 1335 §1, 1341, 1343, 1345; 1361 §4 of *CIC* 1983). Penalty is a consequence of delict, which is not only an immoral action but a conduct causing unjust damage. Justice, in fact, wants this unjust damage to be repaired.²⁴

Every delict breaches the order of justice. When a penal sanction is imposed, this is promptly and effectively re-established.²⁵ It means that the delict provokes a need for the offender to repair the harm he has done and a need for the community to help restore the relationships between the offender and his victim that the crime has disrupted.²⁶ According to Jorge Miras, restoration of justice means attending to the spiritual and material wounds caused by the delict, eradicating or neutralizing their cause and repairing them.²⁷ In his Apostolic Letter *Misericordiae vultus*, Pope Francis affirmed that God's mercy does not deny justice, and those who do wrong must pay the price.²⁸ Penal law is an occasion for justice in the Church, which leads to a conversion of heart and draws one to eternal communion with God.²⁹ The exercise of the Church's penal law is a ministry of justice. Hence, the penalties inflicted must secure justice for the individual, the Church itself, and especially for those who have been the victims of abuse in any form.³⁰ Even if the delict already committed cannot be removed, the penalty seeks to eliminate its effects.³¹

The restoration of justice is of great importance in society today. The legislator wants to restore public order in the Church. The order in question is that of charity and ecclesial communion. According to Valère Nkouaya Mbandji, the need to re-establish justice is fundamental to the credibility of the Church, especially in cases of sexual abuse committed by its members on minors. The demand for justice is sought in the entire canonical domain and is called upon to

²⁴ Cf. EDUARDO BAURA, "L'attività sanzionatoria della chiesa: note sull'operatività della finalità della pena," 609.

²⁵ Cf. BRUNO FABIO PIGHIN, *Il nuovo sistema penale della chiesa*, 229.

²⁶ Cf. MITCHELL N. BERMAN, "The Justification of Punishment," in ANDREI MARMOR (ed.), *The Routledge Companion to Philosophy of Law*, Routledge, New York 2012, 149.

²⁷ Cf. JORGE MIRAS, "Guía para el procedimiento administrativo canónico en materia penal," in *Ius Canonicum* 57 (2017) 324-325.

²⁸ Cf. FRANCIS, Apostolic Letter *Misericordiae vultus* (11.04.2015), n. 21, in *AAS* 107 (2015) 416.

²⁹ Cf. JOHN ANTHONY RENKEN, "Penal Law: A Realization of the *Misericordiae Vultus Ecclesiae*," 104.

³⁰ Cf. MERLIN RENGITH AMBROSE, "The Revision to Book VI on Sanctions: A Welcome Necessity!" in *Indian Theological Studies* 58 (2021) 568.

³¹ Cf. EDUARDO BAURA, "L'attività sanzionatoria della chiesa: note sull'operatività della finalità della pena," 611-612.

express itself both in respect for the rights of the victim and those of the defence.³² Restoration of justice includes reparation and compensation of damages.³³ The reparation of damages is not a penalty and is not the subject of the penal process.³⁴ Nevertheless, for the injured party to be able to bring an action for compensation for damages (cc. 1729-1731 of *CIC* 1983 and cc. 1483-1485 of *CCEO*), it is necessary to activate a judicial penal process. In the revised Book VI, the necessity of compensation for damages is reiterated more emphatically than in the old Book VI.³⁵

3.3. Justice Demands the Penal Action (C. 1341)

While the old c. 1341 of *CIC* 1983 was rather hesitant in obliging the ordinaries to initiate judicial or administrative procedures in penal cases, namely only after other pastoral means had failed to repair the scandal, restore justice, and better the offenders ("*proceduram ... promovendam curet*"), the revised c. 1341 of *CIC* 1983 and revised c. 1402 §1 of *CCEO* emphasize that the ordinaries **must** take action and initiate procedures when they find that pastoral means have failed to achieve the intended purposes ("*proceduram ... promovere debet*"). , even though it substantially resumes the former discipline, certainly establishes a different tone. Instead of the polite subjunctive/coniugntive *curet* ("may take care" to initiate) the penal process in the old Book VI, the revised canon states that an ordinary *debet* ("must take care") to initiate the penal process whenever he perceives that pastoral remedies are insufficient for restoring justice, correcting the offender and repairing the scandal.

Hence, with current canon law, diocesan Bishops and other authorities who preside over communities of the faithful can hardly ignore accusations of sexual misconduct against their clergy anymore. Otherwise, they might become liable to prosecution themselves (newly added c. 1371 §6).³⁶ The competent Ordinary has the obligation to act once he has received news of the facts, which is very different

³² Cf. VALÈRE NKOUAYA MBANDJI, "The Revised Version of Book VI of the *CIC*/83; Major Changes and Issues Not Addressed," in *Studies in Church Law* 16 (2021) 43.

³³ Cf. VELASIO DE PAOLIS, "Commentary on Can. 1341," 366.

³⁴ Cf. VELASIO DE PAOLIS – DAVIDE CITO, *Le sanzioni nella chiesa: Commento al codice di diritto canonico libro VI*, 213; CARLO GULLO, "Reasons for Legal Protection in a Penal Environment," in PATRICIA M. DUGAN (ed.), *The Penal Process and the Protection of Rights in Canon Law*, Wilson and Lafleur Ltée, Montréal 2005, 142.

³⁵ Cf. Cc. 1333 §4; 1344, 2°; 1346; 1347; 1358 §1; 1361 §4; 1376 §§1-2; 1378 and 1393 §2.

³⁶ It is incorporated from *Motu proprio Vos estis lux mundi*, art. 3.

from the discretion left to the Ordinary by the previous legislation.³⁷ The current statement is no longer a recommendation as in the old c. 1341 (he may take care to initiate a procedure; *proceduram promovendam curet*), but an injunction/command/obligation (*promovere debet*).³⁸

The obligation is also strengthened by deleting the adverb “*tunc tantum*” (only when), which was highly restrictive.³⁹ The word “*tunc tantum*” was elusive and dissuasive. Many authorities save the delinquents by applying this formula, and that failed to render justice. Hence, the elimination of this formula “only when” (*tunc tantum*) from the canon makes penal operational a system that was not working and also makes the penal sanctioning instrument a part of ordinary pastoral governance.⁴⁰ Should all other efforts to repair scandal, restore justice and reform the offender fail to produce the desired effect, then the Ordinary may institute a formal procedure (judicial or administrative) for the imposition or declaration of the appropriate penalty.

The new shift emphasises the new text’s general expectation that Bishops and Superiors will incorporate penal law into their ordinary governance of the Church’s life as part of a general tightening of Church discipline towards justice. Try to correct by other measures, failing which resort to the penal process. Culpable negligence in omitting the penal process when it is called for by c. 1341 constitutes a delict (c. 1378 of CIC 1983 and cc. 1443 and 1457 of CCEO), and *Motu proprio Come una madre amorevole* §1 states:

The diocesan Bishop or Eparch, or one who even holds a temporary title and is responsible for a Particular Church, or other community of faithful that is its legal equivalent, according to c. 368 CIC or c. 313 CCEO, can be legitimately removed from this office if he has, through negligence, committed or through omission, facilitated acts that have caused grave harm to others, either to physical persons or to the community as a whole. The harm may be physical, moral, spiritual or through the use of patrimony.⁴¹

³⁷ Cf. DICASTERY FOR LEGISLATIVE TEXTS, *Penal Sanctions in the Church: User Guide for Book VI of the Code of Canon Law*, Vatican City 2023, n. 58, 75.

³⁸ Cf. ALPHONSE BORRAS, “Le nouveau droit penal general (cc. 1311-1363), nihil novi sub sole?,” in *Studia Canonica* 56 (2022) 259.

³⁹ Cf. BRUNO FABIO PIGHIN, *Il nuovo sistema penale della chiesa*, 228.

⁴⁰ Cf. JUAN IGNACIO ARRIETA, “A Presentation of the New Penal System of Canon Law,” in *The Jurist* 77 (2021) 249.

⁴¹ FRANCIS, *Motu Proprio Come una madre amorevole* (04 June 2016), in AAS 108 (2016) 715-717

Moreover, by reordering the three ends of penalties, the revised canon clearly emphasises that resorting to the penal system is, first and foremost, an obligation of justice itself.⁴² Therefore, the expression that seemed to dissuade the bishops from resorting to the penal justice system has been replaced by a compulsory, obligatory canonical provision in the revised Book VI.⁴³

3.4. Restoration of Justice in Censure, Expiatory Penalties and Penal Remedies

According to old c. 1333, the suspension could affect only clerics and prohibitions were also imposed upon only clerics. However, in the newly revised c. 1333, the suspension is envisaged to affect all, including the laity, since they enjoy many offices of leadership in the dioceses or Church institutions. All those in positions of leadership must be held responsible for their actions, which negatively impact the Church. In this way, their malfeasance and delicts are also culpable and punishable which will foster the ministry of justice irrespective of one's status as lay or cleric. Notably, c. 1432 of CCEO does not specify that suspension applies only to clerics. Thus, the *Motu proprio Vocare peccatores* did not require any modifications to include laity in this penalty.

The main objective of medicinal penalties is to achieve the offender's reformation and his conversion. However, if these were not sufficient to achieve the other two purposes pursued by the penal discipline, namely the restoration of justice and the reparation of scandal, the Authority, which by sentence or penal decree inflicts or declares a censure of any kind as a penalty for a delict, can also impose, in addition, the expiatory penalties he deems necessary (newly added c. 1335 §1). Whereas the CIC 1983 manifested a preference for imposing censures, the revised Book VI has increased those cases where expiatory penalties (including dismissal from the clerical state) must be imposed, underscoring the importance of the restoration of justice.

Expiatory Penalty Modified:

According to the newly added c. 1336 §2, 2°, the new addition of the penal provision for paying a fine or sum of money for the Church's purposes in accordance with the guidelines established by the

⁴² Cf. BRIAN T. AUSTIN, "The Revised Book VI, Part I: Selected Norms and Commentary," 295.

⁴³ Cf. DAMIEN G. Astigueta, "Una prima lettura del nuovo libro VI del codice come strumento della carità pastorale," in *Periodica* 110 (2021) 357.

Bishops' Conferences is also another penal to ensure justice is rendered for the delict perpetrated.

Abrogation of Penal Transfer:

In accordance with the old c. 1336 §1, 4°, the penal transfer was envisaged as one of the expiatory penalties. This penal measure is no longer envisaged in the revised Penal Sanction in the Church. Moreover, in the revised c. 1350, which prescribes the provision of dismissal from the clerical state and ensures that he does not lack what is necessary for his worthy support, it is newly added that the dismissed cannot be conferred with another office, ministry or function. This also ensures the restoration of justice.

Expiatory penalties are characterized by having as their objective the punishment, independently of his inner repentance, seeking, in addition to his amendment, the re-establishment of justice and the reparation of the scandal. Without losing the general therapeutic character of any ecclesiastical penalty, expiatory penalties seek first to restore justice and to repair scandal.

Mercy, however, is not opposed to justice, as Pope Francis pointed out, since the mercy of God does not deny justice. In other words, justice is a necessary (but not sufficient) condition for mercy. During the crisis of sexual abuse, critical issues became evident in canonical penal law but not in the merciful, medicinal, and pastoral framework that inspired the whole system.⁴⁴

Vigilance and Penal Precept:

The addition of Vigilance and Penal precept as the newly added penal remedies are other measures that guarantee the restoration of justice. When a person is vigilant, the chances of exploiting the course of justice are very minimal, such as manipulating available evidence, intimidating the witnesses, etc. This would ensure the rendering of Justice. These provisions are reincorporated from cc. 2306 and 2311 of CIC 1917 and c. 1428 of CCEO.

3.5. Facultative to Obligatory Penalties to Help the Authority in the Ministry of Justice

One of the approaches adopted in the revision of Book VI is to guide the best way possible the pastors in cases in which the application of the penalty was at the discretion of the authority, to promote the

⁴⁴ Cf. RAFAEL DOMINGO, "Penal Law in the Roman Catholic Church," in *Ecclesiastical Law Journal* (2018), 158-172.

uniformity of action among pastors for the same delicts, and to help them avoid possible restrictions. This, of course, cannot remove the space given to the ecclesiastical authority to exercise the necessary discretion to inflict penalties so that they can act in a specific case with justice and mercy, following the parameters offered by the law itself. Consequently, many previously facultative penalties are now obligatory. Moreover, in the revised Book VI, if they are facultative, they become obligatory in some instances, such as in the presence of an aggravating circumstance (cc. 1343 and 1326 of *CIC* 1983 and c. 1416 of *CCEO*).

In fact, in several places, the new text requires Bishops and religious Superiors to initiate penal processes or impose punishments when canon law has been violated, even for relatively minor offences, while the old text in those places encouraged them to, leaving the matter to their judgment. The table below clearly outlines how the amended canons prescribe mandatory penalties, contrasting with the old canons that prescribed only optional/facultative penalties.

| Offence | Old Canon | Facultative Penalty | New Canon | Obligatory/ Preceptive Penalty |
|--|-----------|---|-----------|--|
| Unlawful Exercise of Sacred Ministry | 1384 | "May be" punished (<i>puniri potest</i>) with a just penalty. | 1389 | "Is to be" punished (<i>puniatur</i>) with a just penalty, not excluding a censure. |
| Violation of Reputation | 1390 §2 | "Can be" punished (<i>puniri potest</i>) with a just penalty. | 1390 §2 | "Is to be" punished according to the provision of can. 1336 §§2-4, to which moreover a censure may be added. |
| In making appropriate amends towards the good reputation | 1390 §3 | The calumniator "can be" compelled to make appropriate amends" | 1390 §3 | The calumniator "must be" compelled to make appropriate amends |
| Forgery | 1391 | The following "can be" punished with a just penalty 1° one who composes false documents or changes or conceals a genuine one | 1391 | The following "are to be" punished with penalties mentioned in c. 1336 §§2-4 1° one who composes false documents or |

| | | | | |
|--|---------|--|---------|--|
| | | 2° Using of false documents in the ecclesiastical matter 3° A person who asserts false in ecclesiastical documents | | changes or conceals a genuine one 2° Using of false documents in the ecclesiastical matter 3° A person who asserts false in ecclesiastical documents |
| Violations of the obligations of the penalty | 1393 | "Can be" punished with a just penalty | 1371 §2 | "Is to be" punished with expiatory penalties (can. 1336 §§2-4) of order, prohibition or deprivation. |
| Cleric attempting marriage | 1394 §1 | Even after warning, if he persists, he "can be" progressively punished by deprivations, or even by dismissal from the clerical state | 1394 §1 | he "must be" progressively punished by deprivations, or even by dismissal from the clerical state |

Interestingly, the corresponding canons of *CCEO* already envisaged preceptive penalties. C. 1462 of *CCEO* (unlawful exercise of sacred ministry), c. 1452 of *CCEO* (violation of reputation), c. 1454 of *CCEO* (false denunciation), c. 1455 of *CCEO* (forgery), 1453 of *CCEO* (cleric attempting marriage) of *CCEO*, with the exception of violations related to the obligations of the penalty (c. 1467 of *CCEO*), prescribe preceptive/obligatory penalties. This implies that *CCEO* has already imbibed the spirit of justice by envisaging obligatory penalties for the aforementioned delicts.

3.6. Indeterminate Penalty to Determinate Penalty

The penal prescriptions of the 1983 Code of Canon Law were mostly indeterminate, precisely because it was felt that individual Bishops and superiors, whose responsibility it was to enforce penal discipline, would better determine when and how to punish in the most appropriate manner. One aim of the revision, wrote Pope Francis, was to reduce the number of penalties left to the discretion of judges,

especially in the most serious cases.⁴⁵ The revised text of Book VI emphasises the need to apply penal measures as an expression of pastoral charity. Mercy, while necessary, must be accompanied by appropriate corrective measures. Consequently, superiors are obligated to impose penalties as outlined by the Code in a clear and defined manner. This also serves to render justice. Furthermore, the revised Book VI has effectuated several changes, resulting in a paradigm shift from indeterminate to determinate penalties. The table below enumerates these changes.

| Offences | Old Canon | Indeterminate Penalties | New Canon | Determinate Penalties |
|-------------------------------|----------------------|-------------------------------------|---|---|
| Doctrinal Violations | 1371 | Just penalty (<i>iusta poena</i>) | 1365 | Censure and deprivation of office; to these sanctions, expiatory penalties of order, prohibition and deprivation may be added (Can. 1336 §§2-4) |
| Offence of disobedience | 1371, 2 ^o | Just penalty | 1371 §1 | Censure and deprivation of office; to these expiatory penalties of order, prohibition and deprivation may be added (can. 1336 §§2-4). |
| Violations of Church Freedom | 1375 | Just penalty | 1372, 1 ^o , 2 ^o | Expiatory penalties of order, prohibition and deprivation (can. 1336 §§2-4). |
| Financial Delicts | 1377 | Just penalty | 1376 §1, 1 ^o -2 ^o | Expiatory penalties of order, prohibition and deprivation without prejudice to the obligation of repairing the harm (can. 1336 §§2-4). |
| Sacraments through Simony | 1380 | Interdict or suspension | 1380 | Interdict or suspension or expiatory penalties of order, prohibition and deprivation (can. 1336 §§2-4). |
| Illegitimate Sacred Ministry | 1384 | Just penalty | 1389 | Is to be punished with a just penalty, not excluding censure |
| Trafficking in Mass Offerings | 1385 | Censure or other just penalty | 1383 | Censure or with expiatory penalties of order, |

⁴⁵ MERLIN RENGITH AMBROSE, *Canonical Perspectives: On Some Recent Amendments in Ecclesiastical Law*, St Pauls, Mumbai 2022, 71.

| | | | | |
|--|---------|--|---------|---|
| | | | | prohibition or deprivation (Can. 1336 §§2-4) |
| Bribery of Church Officials | 1386 | Just penalty | 1377 §1 | Expiatory penalties of order, prohibition or deprivation (Can. 1336 §§2-4) |
| Accepting Bribes | 1386 | Just penalty | 1377 §1 | To be punished according to the gravity of the offence, not excluding by deprivation of office, without prejudice to the obligation of repairing the harm |
| Culpable Negligence | 1389 §2 | Just penalty | 1378 §2 | Expiatory penalties of order, prohibition or deprivation without prejudice to the obligation of repairing the harm (can. 1336 §§2-4) |
| Violation of Reputation | 1390 §2 | Just penalty not excluding a censure | 1390 §2 | Expiatory penalties of order, prohibition or deprivation to which moreover a censure may be added (can. 1336 §§2-4) |
| Forgery | 1391 | Just penalty according to the gravity of the offence | 1391 | Expiatory penalties of order, prohibition or deprivation according to the gravity of the offence (can. 1336 §§2-4) |
| Prohibited Business or Trade | 1392 | Punished according to the gravity of the offence | 1393 | Are to be punished with the Expiatory penalties of order, prohibition or deprivation, according to the gravity of the offence (can. 1336 §§2-4) |
| Violations of the Obligations imposed by the Penalty | 1393 | Just penalty | 1371 §2 | Expiatory penalties of order, prohibition or deprivation (can. 1336 §§2-4) |

3.7. Justice in Case of Indeterminate Penalty

Several penal canons contained provisions for indeterminate penalty to be imposed by the authorities or superiors, such as to be punished with “just penalty,” “according to the discretion of the judgement” or “according to the gravity of the offence”. In these indeterminate penalties, many a time, the superiors falsely gave importance to mercy and punished with less penalties or even with some penal remedies or did not even punish. Justice suffered because of this. Therefore, the

newly revised c. 1349 gave a clear prescription of the measuring rod to determine the proper penalties if the law envisages indeterminate penalties. The canon prescribes that in determining the penalties, the superiors must choose those which are proportionate to the scandal caused and the gravity of the harm. This paves the way for establishing justice in the case of indeterminate penalties.

3.8. Limiting the Further use of *latae sententiae* Penalties or Excommunications (c. 1318)

Canon 1318 underlines the need to use even greater moderation in establishing automatic, *latae sententiae* penalties by particular law and particularly in imposing the penalty of excommunication. Seeking to ensure the necessary certainty that justice requires, the penal law tries to operate on objective and external data. Therefore, canon law tries to restrict as much as possible the recourse to "*latae sententiae*" penalties due to the uncertainty that they bring with them and also because they can lead to a lack of objectivity due to the fact that they are subjected to the "self-assessment" of the offender's conscience. Therefore, the ecclesiastical Authority, which deems it necessary to establish a particular penal law, is required to reserve this type of sanction "*latae sententiae*" only for cases of malicious delicts capable of causing serious scandal and which cannot be punished externally, with the usual "*ferendae sententiae*" penalties imposed by the judge or by the Ordinary.

In any case, the law commands the local ecclesiastical Authority, which deems it necessary to issue a particular law for its own circumscription, not to constitute a "*latae sententiae*" penalty of excommunication except with great moderation and in cases of special gravity (c. 1318).

4. Justice with Regard to the Delinquent

In a penal process, it is not only the justice towards the victim or the community that the authority must consider, but the authority or the judges are also bound to make sure that justice is not denied to the delinquent.

4.1. The Right of Defence and the Just Process

The examination of the jurisprudence of the Roman Rota on the right to a just process shows that in the canonical order, there is a substantial equivalence, based on natural law, between the right to a fair trial, the right to be heard [the *contradictorium*], and the right of defence as means of guaranteeing the justice of the decision; that is, it reflects the

axiom: a just process is the one that best guarantees the attainment of the truth, without excesses or pathological scruples.⁴⁶

The process (judicial or administrative) will be just if it effectively offers suitable means to guarantee, insofar as possible, the ascertainment of the truth. As Elena Di Bernardo recently recalled, "only a decision that corresponds to the actual truth of the facts fully realizes the demands of justice."⁴⁷

St. John Paul II's final address to the Rota was centred on truth as the end of the process.⁴⁸ The pope used strong words, addressed to those who are constituted in authority and must make decisions in which the margin of discretion is reduced to a minimum due to the very significant demands of justice that such cases be decided according to the truth, without being conditioned by the fear of displeasing the persons involved (*e.g.*, in marriage nullity or penal cases: a spouse who is convinced of the validity or nullity of the marriage; a delator who wants to see the accused convicted even when the latter manages to prove his innocence, or, conversely, a convicted person who proclaims his innocence but is found guilty, etc.).⁴⁹

The institution of the trial, in general, is not in itself a means of satisfying any interest; rather, it is a qualified instrument for fulfilling the duty of justice to give to each one his due. The trial, in its essential structure, is an institution of justice and peace. Indeed, the purpose of the trial is the declaration of the truth by an impartial third party after the parties have been given equal opportunities to present arguments and evidence, with adequate time for discussion. This exchange of views is normally necessary so that the judge can know the truth and, consequently, decide the case according to justice.⁵⁰

A prerequisite for a just penal decision is respect for the right of defence of the accused (but also that of the victim and the community)

⁴⁶ Cf. JOAQUÍN LLOBELL, "Due Process and the "Administrativization" of the Canonical Penal Procedure," in *Studia Canonica* 57 (2023) 181.

⁴⁷ Cf. ELENA DI BERNARDO, "Modelli processuali e finalità perseguite nell'Istruttoria civile e canonica. Rilievi comparativi," in *Apollinaris* 86 (2013) 38; JOAQUÍN LLOBELL, "Due Process and the "Administrativization" of the Canonical Penal Procedure," 191.

⁴⁸ Cf. JOHN PAUL II, Allocution to the Roman Rota (29 January 2005), in AAS 97 (2005) 164-166.

⁴⁹ Cf. JOAQUÍN LLOBELL, "Due Process and the "Administrativization" of the Canonical Penal Procedure," 192.

⁵⁰ Cf. BENEDICT XVI, Allocution to the Roman Rota (28 January 2006), 136, in AAS 98 (2006) 135-138.

by means of the *contradictorium*. The observance of this *contradictorium* is a means by which to arrive with moral certainty at the knowledge of the truth.⁵¹

4.2. Presumption of Innocence (Cc. 1321 of CIC 1983 and 1414 §1 of CCEO)

The maxim, "Innocent until proven guilty" ("*Item quilbet presumitur innocens nisi probetur nocens*"), has had a good run in the twentieth century.⁵² Introducing the presumption of innocence into the revised Penal system is an important amendment and pivotal in the realization of justice. Many voices have rightly emphasized the importance of reforming the ecclesiastical penal law, which finally implements the presumption of innocence into the law. The revised c. 1321 §1 now starts off the section on "Those who are liable to penal sanctions" by declaring, "Any person is considered innocent until the contrary is proved". The same principle is added in the newly revised c. 1414 §1 of CCEO by way of *Vocare peccatores*. The presumption of innocence is a legal principle that every person accused of any crime is considered innocent until proven guilty. The old law did not explicitly contain this presumption. However, it also did not contain any presumption of guilt either. As canonical procedural law obliges the accuser to meet the burden of proof (c. 1526 §1 of CIC 1983 and c. 1207 of CCEO), defendants are to be acquitted whenever their culpability is not proven in a way that makes the judges morally certain of guilt (c. 1608 §4 of CIC 1983 and c. 1291 §4 of CCEO). One might interpret these provisions as effectively containing the presumption of innocence. However, an acquittal due to a lack of proof is not identical to presuming his or her innocence. This development of canon law thus seems to accord with the principle of due process common in most secular legal orders.⁵³

The presumption of innocence of the accused person is a general principle of every system of law, aimed at protecting the image of people in the face of any attempts to tarnish their good reputation illegitimately. This principle, traditionally present in the life of the Church, responds above all to the need for justice and also because charity demands it. However, in the new penal discipline, it was

⁵¹ Cf. JOAQUÍN LLOBELL, "Due Process and the 'Administrativization' of the Canonical Penal Procedure," 200.

⁵² Cf. KENNETH PENNINGTON, "Innocent Until Proven Guilty: The Origins of A Legal Maxim," in *The Jurist* 63 (2003) 106.

⁵³ Cf. JUDITH HANN, "Sex Offenses—Offensive Sex: Some Observations on the Recent Reform of Ecclesiastical Penal Law," in *Religions* 13 (2022) 10.

deemed necessary to underline this cardinal principle of the penal system, enunciating it more clearly in a specific paragraph: "Anyone is considered innocent until the contrary is proven" (c. 1321 §1 of CIC 1983 and c. 1414 §1 of CCEO).⁵⁴ If God must summon litigants to defend themselves (e.g., Adam and Eve), mere humans must also summon them and presume that every defendant is innocent until proven guilty in court.⁵⁵

The accused has the fundamental right to the presumption of innocence. Until the occurrence of the alleged offence is certain and the moral certitude is arrived at, natural justice requires that the accused be considered innocent. The allegation itself cannot be equated with a presumption of guilt. The presumption of innocence of an accused person is fundamental to a sane and just penal system.⁵⁶

4.3. Prescription

In both civil and canon law, prescription is a means by which one acquires or loses a subjective right or frees himself from an obligation by the passage of a specific period of time (c. 197 of CIC 1983 and c. 1540 of CCEO). Prescription for criminal action refers to the time period during which a penal process can begin. When the prescription period set by canon law for a specific delict has passed, the effect of prescription on that delict is immediate, complete and irreversible. A concern for the public good requires that criminal actions be pursued expeditiously or within a certain time. After that time elapses, the action will be extinguished by prescription. Therefore, the promotor of justice cannot initiate criminal proceedings (penal process).

The Code of Canon Law (CIC 1983) specifies specific time limits for different types of offences, dictating when the prescription period begins and ends. Prescription of penal action refers to a legal principle where the Church's ability to impose a penal sanction (punishment) for a canonical delict becomes time-barred after a certain period, meaning that once the timeframe has passed, the Church can no longer pursue disciplinary action against the individual for that specific offence; essentially, the right to punish is "prescribed" by time. This principle is designed to provide fairness and finality in legal

⁵⁴ Cf. *User Guide*, 34.

⁵⁵ Cf. RICHARD HELMHOLZ, "The Bible in the Service of Canon Law," in *Chicago Kent Law Review* 70 (1995) 1557-1581; *Idem*, *The Spirit of Classical Canon Law*, Athens, The University of Georgia Press 1996, *passim*.

⁵⁶ Cf. JOHN ANTHONY RENKEN, "The Canonical Rights of Those Accused of the Delict of Sexual Abuse," in *Studia Canonica* 54 (2020) 228-229.

proceedings, preventing the Church from pursuing punishments for offences that occurred too long ago, where evidence may be difficult to gather or witnesses may no longer be available.

According to canon law, it is good not to cause scandal, not to condemn an innocent person. The scandal and the damage caused by the absence of a penal procedure and by the failure of the application of penalty are considerably less compared to the scandal and the damage that could be caused by the non-application of prescription.⁵⁷ Because, after a period of time, the possibility of proving the crime and defending oneself from the accusations fades, exposing the authorities to the risk of condemning an innocent person and damaging the good reputation of the people implicated in such a trial.⁵⁸

If the good of the victim, along with the punishment of the delict and the desire to inflict a penalty in a vengeful manner prevailed, then punishment would become an end and no longer a means. Moreover, if so, the very reason for the existence of penal law, namely the re-establishment of justice with the reintegration of the delinquent, would become senseless. Thus, the desire for revenge alone and not for justice would become immorally central if we were to concentrate only on the victim, removing the prescription.⁵⁹ It would also sound more like revenge than divine justice.

However, this does not mean that the delinquent must remain unpunished or go scot-free, but that the search for justice must always have a sense of balance, measure, and time so as not to create a sense of revenge in the community.⁶⁰ That is why the newly revised penal law has extended the prescription period so that the delinquents do not go unpunished due to a short period of prescription and must have the possibility to pursue disciplinary action for the violation of the delicts. For this reason, the provisions of c. 1362 of *CIC* 1983 and c. 1152 of *CCEO* have modified the prescription period by extending the time limit. They are mainly from five years to seven years.

Seven years for the following delicts: (previously five years): Canons 1376, 1377, 1378, 1393 §1, 1394, 1395, 1397, or 1398 §2 *CIC* 1983 and

⁵⁷ Cf. SARA PAGLIALUNGA, "La prescrizione nel diritto penale canonico," in *Periodica* 107 (2018) 341.

⁵⁸ Cf. DAMIEN G. Astigueta, "Delitti Imperscrittibili nella chiesa," in *Periodica* 101 (2012) 121.

⁵⁹ Cf. SARA PAGLIALUNGA, "La prescrizione nel diritto penale canonico," 342.

⁶⁰ Cf. DAMIEN G. Astigueta, "Delitti Imperscrittibili nella chiesa," 150.

Canons 1449, 1450, 1451, 1453 §§1-4 and 6-7, 1463, 1464 and 1466 of CCEO come under a seven-year prescription period.

- i) Canon 1376 (newly added in the category of seven years prescription):
 - a) A person who steals ecclesiastical goods or prevents their proceeds from being received;
 - b) A person who, without the prescribed consultation, consent, or permission, or without another requirement imposed by law for validity or for lawfulness, alienates ecclesiastical goods or carries out an act of administration over them.
 - c) A person who, through grave personal culpability, commits the aforementioned offence;
 - d) A person who is found to have been otherwise gravely negligent in administering ecclesiastical goods.
- ii) Canon 1377 (newly added in the category of seven years prescription)
 - a) A person who gives or promises something so that someone who exercises an office or function in the Church;
 - b) A person who accepts such gifts or promises;
 - c) A person who, in the exercise of an office or function, requests an offering beyond that which has been established, or additional sums, or something for his or her own benefit.
- iii) Canon 1378 (newly added in the category of seven years prescription)
 - a) A person who abuses ecclesiastical power, office, or function;
 - b) A person who, through culpable negligence, unlawfully and with harm to another or scandal, performs or omits an act of ecclesiastical power or office or function.
- iv) Canon 1393 §1 (newly added in the category of seven years prescription)
 - a) A cleric or religious who engages in trading or business contrary to the provisions of the canons.
- v) Canon 1394 (it already existed in the old canon of CIC 1983)
 - a) A cleric attempting marriage;
 - b) Persists to give scandal;

c) A religious (non-cleric) in perpetual vows attempting marriage

vi) Canon 1395 (it already existed in the old canon of *CIC* 1983)

- a) A cleric living in concubinage and a cleric who continues in some other external sin against the sixth commandment of the Decalogue, which causes scandal;
- b) A cleric who has offended in other ways against the sixth commandment of the Decalogue;
- c) A cleric who, by force, threats or abuse of his authority, commits an offence against the sixth commandment of the Decalogue or forces someone to perform or submit to sexual.

vii) Canon 1397 (it already existed in the old canon of *CIC* 1983)

- a) One who commits homicide, or who by force or by fraud abducts, imprisons, mutilates or gravely wounds a person;
- b) A person who actually procures an abortion incurs a *latae sententiae* excommunication.

viii) Canon 1398 §2 (it already existed in the old canon of *CIC* 1983)

- a) 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:
 - 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;
 - 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;
 - 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;
 - by force, threats or abuse of his authority commits an offence against the sixth commandment of the Decalogue or forces someone to perform or submit to sexual acts.

Thus, extending the prescription allows for more time to pursue disciplinary actions aimed at restoring justice and achieving the other objectives of penalties. The newly revised penal law has extended the prescription period (mostly 5 - 7) so that delinquents do not go unpunished due to a short prescription period. Otherwise, the authority will have less time and the possibility of pursuing disciplinary action for the violation of the delicts.

However, it is worth noting that the Dicastery for the Doctrine of the Faith has the faculty to derogate from the prescription period on a case-by-case basis in the context of abuse of minors, for which the prescription period is twenty years, which begins to run from the completion of eighteen. The faculty did not give the Dicastery for the Doctrine of the Faith the power to dispense from the law of prescription itself but only to set aside the time limits of prescription in an individual case.

On the other side, the canonical institute of prescription, a fundamental legal concept, serves to ensure fairness and finality in legal proceedings. By establishing time limits for initiating legal action, prescription prevents the Church from pursuing punishments for offences that occurred in the distant past. The cessation of social damage with the disappearance of the memory of the crime; the greater difficulty on the part of the promoter of justice and the judge in finding witnesses and evidence of the crime that have disappeared or faded with the passage of time. The defence of the accused has become more arduous due to the excessive temporal distance from the moment of the commission of the crime.⁶¹ Over time, the evidence pertaining to such offences may become obscured, witnesses may no longer be available, and memories may fade. This poses significant challenges to the accurate and just determination of guilt or innocence. Therefore, the institute of prescription safeguards the rights of the accused, promotes the efficient administration of justice and ensures that the Church's disciplinary actions are based on sound evidence and a fair process.

4.4. Justice in Relation to the Fundamental Rights in a Penal Process

The revised Book VI of *CIC* 1983 contains a succinct list of rights and obligations. It offers opportune juridical guarantees for protecting and safeguarding adequately the desired reciprocity between the rights and duties inscribed in the dignity of the Christian faithful. Everyone

⁶¹ Cf. FRANZ XAVER Wernz – PEDRO VIDAL, *Ius Canonicum*, vol. VII, Universitatis Gregorianae, Roma 1949, 329.

in the Church possesses fundamental rights which are not lost or compromised even when one commits sinful or criminal actions. These rights, substantive and procedural, are rooted in the natural order and in the ecclesiastical order. They are: the fundamental right to be judged according to the law at the moment of the offence (c. 1313 of *CIC* 1983 and c. 1412 §§2-3 of *CCEO*), the right to the presumption of innocence (c. 1321 §1 of *CIC* 1983 and c. 1414 §1 of *CCEO*), right to a good reputation and to privacy (cc. 220, 1390 of *CIC* 1983 and cc. 1452, 1454 of *CCEO*), the right to know one's accusers and the accusation, the right to the preliminary investigation (unless it is entirely superfluous; c. 1717 §1 *CIC* 1983 and 1468 of *CCEO*), procedural rights in the ordinary contentious process, the right to counter the presumption of imputability (c. 1321 §4 *CIC* 1983 and c. 1414 §3 of *CCEO*), the right to lawful imposition of administrative leave (c. 1722 of *CIC* 1983 and c. 1473 of *CCEO*), the right to an advocate, the right to appoint a procurator, the right to timely resolution of a process, the right to refuse the renunciation of the trial (c. 1724 §2 of *CIC* 1983 and c. 1475 §2 of *CCEO*), the right to silence (c. 1728 §2 of *CIC* 1983 and c. 1471 §2 of *CCEO*), the right to speak last (c. 1725 of *CIC* 1983 and c. 1478 of *CCEO*), the right to be absolved of a false accusation (c. 1726 of *CIC* 1983 and c. 1482 of *CCEO*), the right to the observance of prescription (c. 1362 of *CIC* 1983 and c. 1152 of *CCEO*), the right not to be penalized except according to law, the right to a decision reached with moral certitude (c. 1608 §4 of *CIC* 1983 and c. 1291 §4 of *CCEO*), the right to appeal or recourse with suspensive effect (cc. 1727 §1; 1353 of *CIC* 1983 and cc. 1481; 1319 of *CCEO*) , and the right to decent support and remuneration.⁶²

5. Demands of Justice in the Penal Process

Certain conditions must exist in order to utilize the administrative process for the application of a penalty. Canon 1342 §1 of *CIC* 1983 and c. 1402 of *CCEO*, for example, notes that "just causes" (urgent need to restore) must preclude the use of a judicial process in making a determination to impose a penalty by administrative decree. According to Gregory Ingels, such just causes might include an urgent need to repair scandal or restore justice.⁶³ He also mentions the case in which the accused has been responsible for a long series of offences over the years where the commission of a given offence may be certain

⁶² Cf. JOHN ANTHONY RENKEN, "The Canonical Rights of Those Accused of the Delict of Sexual Abuse," 221-264.

⁶³ Cf. GREGORY INGELS, "Dismissal from the Clerical State: An Examination of the Penal Process," in *Studia Canonica* 33 (1999)171.

while the others will have to be investigated more extensively. According to him, the ordinary might determine that in the interests of restoring justice or addressing an urgent question of scandal, it would be better to impose a lesser penalty immediately by administrative decree for the certain offence, leaving to a later judicial action the examination of the other offences with the potential imposition of the penalty of dismissal from the clerical state for those remaining offences.⁶⁴

In making the decision between these two processes, the Ordinary always has at his disposal the advice of canonical experts (c. 1718 §2 of *CIC* 1983 and c. 1469). Foremost in his mind should always be the pursuit of justice in its fullest sense. The choice made should always be the one that will best restore justice, repair scandal, and reform the offender. The judicial penal process is preferred within canon law because it offers a more outstanding guarantee of justice because it contains measures which protect the rights of the accused and ensure the integrity of the process.⁶⁵ The judicial process assures the proper administration of justice in regard to the discernment of the true facts, the rights of the accused, and the decisions reached by the judges.⁶⁶

Conclusion

Notwithstanding the divine nature of the Church and the spiritual vocation of its members, individual members, regardless of their ecclesiastical status, are susceptible to committing acts that constitute canonical offences. While the Church, by its very nature, is called to be merciful and is bound to offer forgiveness, it also possesses a solemn duty to protect the vulnerable and uphold justice within its community. Moreover, the Church, as the divinely instituted teacher of truth and moral doctrine, cannot remain indifferent or unresponsive to acts that contravene its teachings. Such inaction would not only undermine the Church's credibility but also sow confusion and scandal among the faithful. In order to fulfil its responsibilities and ensure the proper administration of justice, the Church possesses the inherent authority to exercise coercive measures over its members. This necessitates a system of penal law that provides a framework for the just and equitable application of these measures. Therefore, it must attend primarily to the substantial justice

⁶⁴ Cf. *Ibid.*

⁶⁵ Cf. R.L. Millette, "An Analysis of the Preliminary Investigation in Light of the Rights of the Accused," in *The Jurist* 75 (2015) 187.

⁶⁶ Cf. JOHN ANTHONY RENKEN, "Penal Law: A Realization of the *Misericordiae Vultus Ecclesiae*," 135.

of the concrete case without being content with the mere arithmetical application of the norms.⁶⁷ The revised penal law of the Church fulfils this principle.⁶⁸

The credibility of the Church to be *speculum iustitiae* (mirror of justice) depends on its ability to execute justice impartially. Restoration of justice through the penal process and sanctions helps to achieve *salus animarum*, which is the supreme law of the Church (c. 1752). Hence, by initiating a penal process and imposing the penalties enshrined in the penal law, the Ordinary is ultimately favouring *salus animarum* of all those concerned, *i.e.*, the victim, the offender and the members of the community. However, the famous justice must be tempered by mercy, *i.e.*, *iustitia temporata misericordiae*. Justice must be tempered with mercy but cannot be substituted by it. While emphasising this, Shakespeare's *Merchant of Venice* comes to mind. "The quality of mercy is not strained. It droppeth as the gentle rain from heaven".

⁶⁷ Cf. JUAN IGNACIO ARRIETA, "The Role of the Dicastery for Legislative Texts in the Season of Reform," in MERLIN RENGITH AMBROSE (ed.), *Aggiornamento in Canon Law: Theory and Praxis*, Conference of Catholic Bishops of India, Bangalore 2025², 15.

⁶⁸ Cf. MERLIN RENGITH AMBROSE, "Recent Amendments in Canon Law: An Analytical Overview and Juridical Implications," in MERLIN RENGITH AMBROSE (ed.), *Aggiornamento in Canon Law: Theory and Praxis*, 244.