

JUSTICE AND MERCY IN ECCLESIASTICAL PENAL ACTIONS: INSIGHTS FROM RECENT REFORMS IN CCEO

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Abstract

This paper examines the application of justice and mercy in ecclesiastical penal law, focusing on recent reforms in the Code of Canons of the Eastern Churches (CCEO) introduced through *Vocare Peccatores*. It explores the Church's mission to uphold justice while fostering repentance, addressing key aspects such as the occurrence of delicts, the addition of new offenses and penalties, and the role of warnings as corrective measures. The study further analyzes judicial discretion, the principles for applying penalties, and the impact of aggravating or extenuating factors, including prescription in penal norms. By assessing these developments, the paper explains how recent penal reforms enhance canonical discipline, ensuring fairness, proportionality, and pastoral care in penal procedures.

Keywords: Delicts, penalties, penal procedure, aggravating and extenuating factors, presumption, prescription.

In recent years, the Church has faced various challenging cases that have strengthened its commitment to applying justice with fairness while showing mercy in its penal actions. Consider the case of a trusted parish priest accused of financial mismanagement. Over several years, he diverted church funds for personal gain, betraying the trust of his parishioners. Though he initially denied the allegations, a diocesan investigation revealed clear evidence of

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misconduct, and he eventually admitted his wrongdoing in the external forum. The bishop faced a dilemma: How could he restore justice for the parish community while offering the priest an opportunity for repentance?

A more grievous case involved a cleric accused of sexually abusing an elderly woman. Despite the victim's detailed testimony and corroborating accounts from her relatives, the cleric adamantly denied the accusations. The canonical trial in this instance highlighted the dual objectives of ecclesiastical penalties: to repair the harm done to the victim and to offer the offender an opportunity for conversion, even when the offender refused to admit guilt.

The mission of the Church "to call sinners to repentance" demands a harmonious integration of mercy and justice. Canonical penal law serves this mission by striving to restore justice, correct/reform the offender, and repair the damage caused by the delict, the triple objectives of canonical penalties (c. 1402 §1)¹.

Recognizing the evolving needs of the faithful and the challenges posed by contemporary society, recent reforms in the penal norms of the Code of Canons of the Eastern Churches (CCEO) aim to make penal law more effective, precise, and suited to pastoral exigencies.² These changes, promulgated through *Vocare Peccatores*, include new offences and penalties, clarifications of offenses, procedural safeguards such as the right of defense, and the proportionality of penalties to ensure fairness and equity.

Those entrusted with "the power to loose and to bind" have a solemn duty to heal the "sickness" of offenders by administering remedies – be it reproof, rebuke, or penalties – proportional to the gravity of the

¹ Newly added to CCEO by the revision through *Vocare Peccatores*. See also the introduction of *Vocare Peccatores*: Pope Francis, apostolic letter motu proprio, *Vocare Peccatores*, dated 20 March 2023. This entered into force on 29 June 2023. The document cited in this article is from the website: https://www.vatican.va/content/Francesco/la/motu_proprio/documents/20230320-motu-proprio-vocare-peccatores.html, accessed 2 January 2025.

² For example, the revised canonical norms provide a more precise and robust framework for addressing cases mentioned above. CCEO canon 1453 now includes detailed provisions concerning offenses against chastity, with specific penalties considering the gravity of the misconduct. Similarly, the revised CCEO canon 1449 expands the scope of penalties for financial mismanagement, ensuring accountability and restitution. These changes are not merely procedural updates but reflect a theological and pastoral commitment to uphold the Church's mission of justice and mercy.

offense (CCEO c. 1401). Pope Francis reminds that neglecting disciplinary sanctions in the Church undermines justice, allows immoral behavior to persist, and reflects a failure of bishops and superiors to fulfill their responsibilities.³ Punishment in this context is not an end in itself but a means of healing and restoration, both for the offender and the community.

By examining the revisions in Title XXVII of the CCEO and canon 1152, this paper reflects on the interaction between canonical discipline and the pastoral care of souls, emphasizing how justice and mercy can coexist within ecclesiastical penal norms.

1. Justice and Mercy in the Church's Mission

The Church's mission is inherently rooted in the pursuit of justice and mercy, both of which are inseparable dimensions of divine love. Justice, in the context of canon law, seeks to uphold the order willed by God, ensuring that rights and duties within the ecclesial community are respected and safeguarded. Theologically, justice is not merely a human construct but a reflection of God's own nature, calling the faithful to live in harmony with His will.⁴ Canon law, as the juridical expression of this divine justice, establishes norms that aim to foster the common good, protect the rights of individuals, and ensure that ecclesiastical governance reflects Christ's truth and love. In this framework, justice is not punitive but restorative, aiming to heal breaches in the ecclesial body while maintaining the integrity of the Church's mission.

The maxim '*Ruat caelum fiat iustitia*'—let justice be done though the heavens fall—is as a timeless challenge that resonates deeply with the Christian understanding of justice, emphasizing an unwavering commitment to truth and righteousness, even at great personal or communal cost. Yet, within the Church, this principle is always complemented by the gospel imperative of mercy. While justice seeks

³ See the introduction of the apostolic constitution *Pascite Gregem Dei* by Pope Francis, dated 23 May 2021. The English translations used in this article is from the website: https://www.vatican.va/content/francesco/en/apost_constitutions/documents/papafrancesco_costituzione-ap_20210523_pascite-gre-gem-dei.html, accessed 2 January 2025.

⁴ Stephen Wellum, "Thinking Biblically and Theologically about Justice," in *Christ Over All* (July 2023): <https://christoverall.com/article/longform/thinking-biblically-and-theologically-about-justice/:text=The/only-warrant/for%a-universal%objective,%justice%as%a%mere%human%social%construct>, accessed 2 January 2025; See also, John M. Frame, *The Doctrine of God*, Phillipsburg, Presbyterian & Reformed Pub Co, 2002, 448.

to rectify wrongs, restore order, and uphold the rights of individuals and communities, mercy extends compassion and forgiveness, offering a path toward reconciliation and renewal. Yet, this commitment to mercy must not overshadow the Church's responsibility to act decisively against grave injustices, such as abuse and other violations of human dignity.

We will now analyze the different stages of penal actions and the key elements of a delict, from its occurrence to the punishment imposed by either the hierarch or the judge, and examine how the reform has influenced these aspects.

2. Occurrence of a Delict

According to canon 1414 §2 of the Code of Canons of the Eastern Churches, penalties apply only to those who violate "a penal law or precept either deliberately, through a seriously culpable omission of due diligence, or by seriously culpable ignorance of the law or precept".⁵ That means, a delict occurs only under the following circumstances:

- a. *Violation of a penal law/precept*
- b. *Deliberate violation*
- c. *Violation by omission of due diligence or ignorance.*

A penal law referred to here is a legal norm established by the Church that specifies a particular action or omission as a violation and attaches a penalty to it. Canon 1414 §3 of the CCEO, however, establishes that when an external violation of a penal law or precept occurs, it is presumed to have been deliberate unless evidence proves otherwise. For other types of laws or precepts, deliberateness is presumed only when the violation is repeated after a prior penal warning. In such cases, a violation becomes a delict only when the omission or ignorance is seriously culpable.⁶

⁵ A delict as defined in CIC is an external and imputable violation of a penal law or precept, committed with deliberate intent or through culpable negligence, which is punishable under ecclesiastical law (CIC c. 1321 §§1, 2).

⁶ The **Code of Canon Law** employs slightly different terminology. As per **canon 1321 §2**, only an external violation of a law or precept that is "*gravely imputable by reason of malice or of culpability*" is punishable. Additionally, **canon 1321 §3** states that if the violation occurs "due to the omission of due diligence, the person is not punished unless the law or precept provides otherwise." Although the Eastern Code explicitly uses the term "seriously culpable omission," it conveys the same essential principle of imputability found in the Latin Code.

A non-penal norm in canon law is a directive or rule that governs conduct but does not inherently carry a specific penalty for its violation. It is intended to guide behavior in accordance with Church teachings or administrative requirements, without prescribing punitive consequences unless further action is taken. In such cases, penalties may be applied through precepts, including corrective actions aimed at guiding the individual back to the right path. In the context of canon 1406 §2, when a hierarch issues a warning to enforce a non-penal norm in an individual case and includes the threat of penalties, that warning takes on the character of a penal precept. These precepts are given when admonitions or reprimands prove to be ineffective. In such situations, the hierarch must give a penal warning (*Hierarcha det praeceptum poenale*), in which he prescribes precisely what is to be done or avoided (CCEO c. 1407 § 3).

For example, a diocesan directive requiring all clergy to submit an annual report on their ministry is a non-penal norm. If someone fails to comply, the hierarch may issue a reminder, together with a warning that attaches a potential penalty for future noncompliance, effectively transforming the directive into a penal precept.

3. New Delicts Added to CCEO by Reform

Recent revisions in canonical penal law, particularly through *Vocare Peccatores*, have introduced new delicts that address contemporary challenges.⁷ These revisions reflect the Church’s response to modern societal issues, such as financial misconduct, abuse, and other offenses that may not have been as clearly addressed in previous norms. These additions ensure that the Church’s legal framework is responsive to the evolving needs of the faithful and to situations that threaten the integrity of the Church’s mission. The following are the important revisions in a nutshell:

CCEO	CIC
Appealing to the College of Bishops against an act of the Roman Pontiff (c. 1436 §3).	c. 1366 (formerly c. 1372)
Consecration of sacred species for sacrilegious purposes (c. 1442 §2).	c. 1382 §2 (newly added).
Attempting to celebrate Eucharist (c. 1443 §1, 2°).	c. 1379 §1, 1° (formerly c. 1378 §2, 1°).

⁷ There are about 26 changes in delicts; mostly new, a few has been reordered or revised.

Attempting to impart sacramental absolution (c. 1443 §1, 3°).	c. 1379 §1, 2° (formerly c. 1378 §2, 2°).
Administering sacraments to prohibited persons (c. 1443 §2).	c. 1379 §4 (newly added).
Violating the obligation of observing the pontifical secret (c. 1446 §2).	c. 1371 §4 (newly added)
Failure to observe the duty to execute a sentence (c. 1446 §3).	c. 1371 §5 (newly added)
Neglect to report an offence, when required to do so by a canonical law (c. 1446 §4). ⁸	c. 1371 §6 (newly added).
A cleric abandoning sacred ministry for a continuous period of six months (c. 1446 §5).	c. 1392 (newly added).
Stealing of ecclesiastical goods or preventing their proceeds from being received (c. 1449 §1, 1°).	c. 1376 §1, 1° (newly added).
Unlawful alienation or administration of ecclesiastical goods (c. 1449 §1, 2°. "Unlawful administration", "consultation", other requirements for "validity or liceity" etc., are newly added; 'appropriate penalty' has been made specific (those in cc. 1429 and 1430).	c. 1376 §1, 2°. (formerly c. 1377). "Unlawful administration", "consultation", "consent", or other requirements for "validity or liceity" etc., are newly added.
Trafficking Holy Mass offerings (c. 1449 §1, 3°).	c. 1383 (formerly c. 1385). The penalty is specified.
Alienation or administration with grave personal culpability, or gravely negligent in administering ecclesiastical goods (c. 1449 §2, 1°, 2°).	c. 1376 §2, 1°, 2° (newly added).
Clerics' offence against 6th commandment, not mentioned in other canons (c. 1453 §3).	c. 1395 §2. Modified to address certain specific offences individually.
Sexual offence by a cleric by force, threats or abuse of authority (c. 1453 §4).	c. 1395 §3 (c. 1395 §2 was reformulated and "abuse of authority" is newly added.

⁸ Obligatory reporting by clerics or members of religious institutes or members of Societies of Apostolic Life as per VELM art. 3 §1.

Sexual offences by clerics against minors or persons habitually having imperfect use of reason (c. 1453 §5, 1°, 2°, 3°). ⁹	c. 1398 §1, 1°, 2°, 3° (newly added). Formerly offences against minors below sixteen was punishable under canon 1395 §2).
Sexual offences by religious against minors or persons habitually having imperfect use of reason, or with other persons by force, threats or abuse of authority (c. 1453 §7).	c. 1398 §2 (newly added).
Recording confession and diffusing through the media, whether real or simulated (c. 1456 §3). ¹⁰	c. 1386 §3 (newly added).
Addition of “violation of secrecy by interpreters or those who obtain the knowledge of sins from confession” to canon 1456 §2.	c. 1386 §2 (no change; formerly c. 1388 §2)
Conferring sacred order on a woman, and attempting to receive the sacred order by a woman (c. 1459 §3).	c. 1379 §3 (newly added).
Receiving sacred orders when under the penalty of major or minor excommunication or an impediment, voluntarily concealed (c. 1459 §4).	c. 1388 §2 Receiving sacred orders with a censure or irregularity purposefully concealed (newly added).
Giving or promising or receiving something to act unlawfully (c. 1463 §1). An addition was made concerning ‘the obligation to repair the damage’.	c. 1377 §1 (formerly c. 1386). The penalty was made specific. The obligation to repair the harm was added.
Demanding a fee beyond what is determined (c. 1463 §2).	c. 1377 §2 (newly added).
Abuse of ecclesiastical power and culpable negligence in the acts of administration (c. 1464 §§1, 2). An obligation to repair the damage was added to the first paragraph and another paragraph was included.	c. 1378 §§1, 2 (formerly c. 1389 §§1, 2). An obligation to repair the damage and harm was added to the penalties in both paragraphs. In the second paragraph the penalty is made specific.
A cleric or a religious committing a financial offence (c. 1466 §2).	c. 1393 §2 (newly added).

⁹ SST Norms, art. 6.

¹⁰ SST Norms, art. 4 §1, 6°

Violating obligations imposed by a penalty. "Additional penalties" instead of "heavier penalties (c. 1467)	1371 §2 (formerly 1393). "Just penalty" is made specific with the penalties mentioned in 1336 §§2-4).
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4. New Penalties Added to the Eastern Code

Together with the introduction of new delicts, the revision has also introduced new penalties to address these offenses appropriately. Some of these penalties are corrective in nature, intended to guide the offending individual towards repentance and reconciliation with the Church. Others are more severe, aimed at protecting the community and restoring justice.

The revisions to canon 1429 and canon 1430 of the Code of Canons of the Eastern Churches introduce significant changes, closely conforming to the updates in the Code of Canon Law while respecting the particularity of the Eastern tradition. These additions or changes include the prohibitions (CCEO c. 1429 §1; CIC c. 1336 §3) such as:

- i. To exercise, everywhere or in a specific place or territory or outside them, all or some offices, duties, ministries, or certain tasks attached to offices or duties.
- ii. To place all or some acts of the power of the order.
- iii. To place all or some acts of the power of governance.
- iv. To exercise any right or privilege or to use insignia or titles.
- v. To enjoy an active or passive voice in canonical elections or participate with the right to vote in ecclesiastical councils or colleges.
- vi. To wear an ecclesiastical or religious habit.

This can also be an order:

- i. To pay a sum of money for the purposes of the Church, according to the modes determined by the particular law (CCEO c. 1429 §2, 2°; CIC c. 1336 §2, 2°).

An addition of a paragraph to the penal privations specified in CCEO c. 1430:

- i. The privation of the faculty to hear confessions or preach, of delegated powers of governance, and of all or part of ecclesiastical remuneration, in accordance with guidelines established by the Synod of Bishops or particular law (CCEO c. 1430 §3; cf. CIC c. 1336 §4, 2°, 3°, 5°).

These prohibitions and privations expand the Church's ability to limit a cleric's ministry and governance powers in response to grave delicts. These changes ensure that penalties are not only punitive but also corrective and protective, safeguarding ecclesiastical integrity and the faithful.

The absence of a provision in the Eastern Code equivalent to CIC canon 1338 §5, which states that the prohibitions in canon 1336 §3 (CCEO c. 1429 §1) are never under pain of nullity, serves as a potential guideline for the Eastern legislator. Together, these additions to the Eastern Code reflect a healthy approach to penal discipline, ensuring justice and pastoral care while addressing contemporary challenges in the governance of the Church.

5. Warning as a Corrective Measure

In ecclesiastical penal law, the principle of mercy and the pastoral care of the faithful take precedence, even when addressing offenses. Canon 1407 underlines the significance of issuing warnings as an integral step in the penal process. Warnings not only serve to remind the offender of the gravity of the delict but also offer them a clear path to repentance and reform. Paragraphs 1 and 2 emphasize this pastoral approach, ensuring that penalties are imposed only after due warning and an opportunity for the offender to desist and make reparation.¹¹ This reflects the Church's commitment to lead the offender back to communion with the Church rather than merely punishing wrongdoing.

The addition of paragraph 3 to canon 1407 strengthens the Church's disciplinary framework by introducing the concept of a penal warning when prior admonitions have proven ineffective. By specifying the actions an offender must undertake or avoid, the penal warning functions as a formal and precise directive, offering clarity and a final opportunity for correction before the imposition of penalties. This procedural step underlines the Church's commitment to the offender's spiritual welfare and potential for reform, reflecting a pastoral approach even within the realm of discipline.

However, canon 1339 §1 of CIC gives the hierarch a directive to warn a person who is 'in a proximate occasion of committing an offence or when, after an investigation, there is a serious suspicion that an offence has been committed'. This can also take the form of a

¹¹ The parallel canon in CIC is concerning the imposition of censures, which are to be preceded by a warning (CIC c. 1347 §1).

"correction" (which was formerly termed a "rebuke") if the act or behaviour of the person has given rise 'to scandal or serious disturbance of public order' (CIC c. 1339 §2). Though the Eastern Code contains a provision to give a 'public rebuke' (the term no more used in the CIC after revision) in the parallel canon 1427, there is no mention of a warning to a person who is 'in a proximate occasion of committing an offence' or if there is a serious suspicion that an offence has been committed.

However, cases involving grave delicts, such as financial misappropriation or sexual misconduct, raise critical questions regarding the adequacy of a penal warning. Given the significant harm and damage caused to victims and the ecclesial community, the Church must carefully discern whether such offenses warrant immediate punitive measures or whether a penal warning suffices. While the inclusion of a penal warning enhances procedural fairness and transparency, it must not delay justice or diminish accountability, especially when vulnerable individuals or the common good are at stake.

This approach highlights the hierarchy's responsibility to evaluate the gravity of each offense and the likelihood of genuine repentance before deciding on the appropriate course of action. It also reinforces the need for clarity and consistency in canonical penal procedures, ensuring that justice is served without compromising the Church's pastoral mission.

6. Decision Concerning a Penal Procedure

After conducting a preliminary inquiry, the hierarchy must decide whether to proceed with a penal process and, if so, whether to follow a judicial or extra-judicial procedure (CCEO cc. 1468, 1469).¹² At this stage, as outlined in CCEO canon 1403 §1, the hierarchy, after consulting the promoter of justice, may choose not to initiate a penal process or impose penalties, provided certain conditions are met. These conditions include the offender's sincere repentance, confession of the offense in the external forum, and the implementation of adequate measures to repair scandal and harm caused by the delict. This cannot be applied if the penal process has already begun. This provision reflects the Church's pastoral concern for balancing justice and mercy, particularly in cases where the offender demonstrates

¹² Before making this decision the hierarchy has to hear the accused and the promoter of justice (c. 1469 §3).

genuine contrition and the damage to the community can be effectively addressed without formal penalties.

However, for offenses carrying penalties reserved to higher authority—such as *delicta graviora* cases involving abuse of minors or other grave violations under the jurisdiction of the Dicastery for the Doctrine of the Faith (DDF)—the hierarchy must obtain prior permission before exercising this discretion (CCEO c. 1403 §2). This ensures consistency in addressing serious offenses and highlights the importance of safeguarding the integrity of canonical processes while addressing harm caused to victims and the broader ecclesial community.

The careful application of canon 1403 is especially crucial in cases of serious offenses or violations that cause significant scandal and harm within the community. The severity of such offenses often necessitates formal penal procedures to ensure justice and prevent future violations. Canon 1402 of the Code of Canons of the Eastern Churches, especially its newly added paragraph §1, mandates the hierarchy to "promote the procedure for inflicting penalties" when measures such as reprimand, entreaty, or rebuke fail to restore justice, prompt repentance, or repair scandal. Penalties are warranted when the offense disrupts ecclesial harmony, causes public scandal, or demands restoration of justice and community welfare. However, penalties must remain a last resort, applied only after pastoral measures—such as fraternal correction, admonition, or entreaty—prove ineffective. The addition of §1 emphasizes the pastoral purpose of penal action, prioritizing justice, repentance, reform, and reparation before resorting to judicial or extrajudicial penalties.

7. Discretion of a Judge

The revisions to canon 1409 provide a more nuanced framework for the application of penal law, granting the judge greater discretion to ensure justice and pastoral care. Paragraph 1 allows the judge to act with prudence and flexibility in the imposition of penalties, emphasizing the need to balance punishment with considerations of fairness and the spiritual welfare of the offender. Specifically, the judge can:

- i. **Defer the penalty** if immediate punishment may cause greater harm, *unless urgent action is required to repair the scandal* (1409 §1, 1°). This added emphasis on the necessity of repairing the scandal represents a new consideration introduced in the revised norms, emphasizing the importance of safeguarding the

community's faith and trust while balancing justice with prudence.

- ii. **Abstain from imposing a penalty or impose a lighter one** if the offender has reformed, made reparation for scandal and damage, or is sufficiently punished by civil authorities (1409 §1, 2°).
- iii. **Moderate penalties** for multiple delicts to avoid excessive severity (1409 §1, 3°).
- iv. **Suspend the penalty obligation** for a first-time offender of upright character, provided the scandal does not urgently require repair. This suspension becomes permanent if no further delicts occur within the judge-determined timeframe; otherwise, the offender faces more severe punishment for both delicts (1409 §1, 4°).

Canon 1409 §2 introduces a crucial clarification to the existing norm by excluding the penalties listed in canon 1402 §3. It grants the judge discretion to impose penalties "proportionate to the scandal caused and the gravity of the harm inflicted" when the law prescribes indeterminate punishments. This ensures juridical boundaries are respected while adjusting penalties to the specific circumstances of each case, enhancing both justice and flexibility.

8. Principles for Applying Penalties

The application of penalties within the Church is governed by some key principles, which are outlined both in the Code of Canon Law and the Code of Canons of the Eastern Churches. These principles are designed to promote justice, safeguard individual rights, and support the Church's pastoral mission. This paper includes only those principles either newly added to the Code or those directly or indirectly considered during its recent amendments, focusing on their impact on the application of penalties and the evolving understanding of justice in the Church.

8.1. *Nulla Poena Sine Lege*

The principle of *nulla poena sine lege*—"no penalty without law"—is a keystone of canonical jurisprudence, right from the Roman Law times¹³ enshrined in canon 1414 of the Code of Canons of the Eastern

¹³ See Jerome Hall, "Nulla poena sine legge," in *The Yale Law Journal* 47/2 (1937) 165-193, where he examines the origin of the principle. The United Nations' Universal Declaration of Human Rights in 1948, inserted this as article 11 (2):

Churches. A delict occurs only when a penal law or penal precept is violated (canon 1414). No penalty may be imposed unless it is expressly provided for by law, ensuring protection against arbitrary or unjust punishments.

In this context, the introduction of newly defined delicts, particularly those addressing financial mismanagement or misappropriation, and sexual abuses by clerics or religious, is highly significant. For example, the norms concerning sexual abuse committed by force, threats, or abuse of authority by clerics or religious, or coercing someone to perform or undergo sexual acts, were initially outlined in *Vos estis lux mundi* (VELM art. 1 §1, a). These norms have since been incorporated into the penal legislation of both the Latin and Eastern Codes during the revision of penal norms.

Similarly, prior to the recent amendments, there were no explicit penal provisions addressing financial offenses, such as mismanagement, stealing or misappropriating ecclesiastical goods or preventing their fruits from being received, illegitimately making profit from the offerings of Holy *Qurbana*. The revised norms now include penalties for such offenses (CCEO c. 1449 §1, 1°, 3°), reflecting the Church's growing commitment to financial transparency and accountability.¹⁴ These developments highlight the evolving nature of canonical legislation, responding to emerging challenges while adhering to the fundamental principles of justice and equity.

8.2. The Presumption of Innocence

The principle of the presumption of innocence originates from the Roman law maxim "*ei incumbit probatio qui dicit, non qui negat*," which asserts that the burden of proof rests with the accuser, not the defendant. Attributed to the Roman jurist Paul and introduced into Roman criminal law by Emperor Antoninus Pius, this principle is outlined in the sixth-century Digest of Justinian (22.3.2).¹⁵ The

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>, accessed 18 January 2025. See also The European Convention for the Protection of Human Rights, article 7: https://www.echr.coe.int/documents/d_echr/convention_ENG, accessed 5 February 2025.

¹⁴ The addition of 'consultation' in paragraph 2 of c. 1449 §1 also signifies the importance given to transparency and accountability.

¹⁵ "*Ei incumbit probatio qui*," in *Law Times Journal*, 29 September 2019: <https://lawtimesjournal.in/ei-incumbit-probatio-qui/#:~:text=The%20sixth%2Dcentury%20Digest%20of,and%20third%20century%20jurist%20Paul,accessed%2025%20July%202024>. Cf. also Kenneth Pennington, "Innocent Until Proven Guilty: The Origins of a Legal Maxim", *Jurist* 63 (2003) 106-124.

principle was included in the United Nations' Universal Declaration of Human Rights in 1948.¹⁶

The presumption of innocence, newly codified in canon 1414 §1 through the revision of *Vocare Peccatores*, is a foundational principle in the administration of justice. This canon explicitly affirms that no individual is to be considered guilty until proven so through due process. While the concept was previously implicit in the framework of fair trial norms, its explicit inclusion provides greater clarity regarding the Church's commitment to justice and the protection of individual rights.

This presumption ensures a fair trial without prejudgment, affirming the Church's commitment to human dignity and rights. It is in conformity with legal traditions that protect individuals from unjust condemnation and penalties. The principle is further supported by canon 24 of CCEO (CIC C. 221 §2), which articulates the rights of the faithful to defend themselves and ensure that any judgment against them is rendered in a just and equitable manner. These rights include the ability to present a defense, confront evidence, and appeal decisions that they believe to be unjust. The right to defense is a fundamental principle of ecclesiastical justice, enshrined in both CIC and the CCEO. These provisions guarantee that accused individuals are afforded the opportunity to present evidence and be heard, thereby ensuring the integrity of penal procedures, upholding the dignity of the accused, and preventing potential abuses of authority.

Only a deliberate violation of a penal norm constitutes a delict. However, canon 1414 provides a nuanced perspective by presuming deliberation in cases of external violations, enabling ecclesiastical authorities to address scandal, prevent harm, and protect justice.

¹⁶ The United Nations' *Universal Declaration of Human Rights* in 1948, article 11 (1): https://nhrc.nic.in/sites/default/files/UDHR_Eng_0.pdf, accessed 5 February 2025. In 1953, the *European Convention for the Protection of Human Rights* included this under article 6 (2): https://www.echr.coe.int/documents/d/echr/convention_ENG, accessed 5 February 2025. Later, *United Nations International Covenant on Civil and Political Rights* incorporated this as article 14 (2): <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights/text=Article%2014,-1.&text=All%persons%shall%be%equal,impartial%tribunal%established%by%law>. The French included an article in the *French Declaration of the Rights of Man and Citizen* of 1789 stating that "every man is presumed innocent until declared guilty" (*Déclaration des Droits de l'Homme et du Citoyen* de 1789, Article 9: <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789>, accessed 20 January 2025).

While this ensures decisive action in urgent situations, it simultaneously upholds the presumption of innocence in penal proceedings.

This codification holds particular significance in cases of grave offenses, such as the abuse of minors or crimes against women, which are in some countries offences that cannot invoke presumption of innocence.¹⁷ In such situations, societal and pastoral pressures can make it difficult to uphold the presumption of innocence, often resulting in rushed judgments or actions that may infringe on the rights of the accused.¹⁸ By reaffirming this principle, the Church ensures justice is served while balancing the need to address offenses with protecting everyone's rights.

The explicit inclusion of the presumption of innocence in the revised canons reflects the Church's evolving understanding of justice and fairness. It ensures that ecclesiastical penal procedures remain grounded in the principles of equity, offering clarity and consistency in the application of Church law, even in complex and sensitive cases.

Canonical trials are structured to provide transparency, impartiality, and a systematic approach to determining guilt or innocence. The investigative phase, governed by clear rules, ensures that evidence is gathered and evaluated fairly, while the rights of the accused are preserved. The principle in *dubio pro reo* (when in doubt, favor the accused), which originates in Roman law and is closely linked to the presumption of innocence,¹⁹ ensures that penalties are not imposed

¹⁷ A few examples in the Indian legal system include: Minor abuse cases, in which the presumption is that the accused has committed the delict if it involves sections 3 (penetrative sexual assault), 5 (aggravated penetrative sexual assault), 7 (sexual assault), and 9 (aggravated sexual assault) of Protection of Children from Sexual Offences Act 2012 (s. 29); abetment of suicide by a married woman and dowry deaths as outlined in the *Bharatiya Sakshya Adhiniyam* (BSA), 2023 (formerly Indian Evidence Act, 1872), sections 117 and 118 (Evidence Act, sections 113A and 113B) in which presumption is against the husband or relatives, especially, if the death occurred within seven years of marriage. This presumption shifts the burden of proof to the accused to demonstrate their innocence. This is linked to section 80 of *Bharatiya Nyaya Sanhita* (BNS), 2023 (formerly Indian Penal Code, 1860, s. 304B). So also, in a prosecution for rape under sub-section (2) of section 64 of BNS if the woman states in her evidence that she did not consent, the court will presume that she did not consent (BSA, s. 120; formerly Evidence Act, s. 114A).

¹⁸ Nowadays, civil courts exercise greater caution in handling cases of minor abuse and violence against women to ensure that innocent individuals are not wrongfully convicted, given the increasing prevalence of false accusations.

¹⁹ See Chairul Anwar, Adwani, Rizanizarli, "*In dubio pro reo* principle as judges' consideration in criminal case," in *International Journal of Law* 8 (2022) 181-183.

unless guilt is proven beyond reasonable doubt. This reflects the Church's inclination toward mercy in situations where certainty is lacking.

8.3. Aggravating or Extenuating Factors

When imposing a penalty, the judge must consider aggravating factors that justify a more severe punishment than what is prescribed by law or precept or some extenuating factors, which can reduce the severity. Prior to the revision of penal norms, recidivism was the only specific example listed in canon 1416 of the Eastern Code. However, the revised canon now includes additional aggravating factors, such as committing an offense while in a state of intoxication or mental disturbance deliberately sought to justify or excuse the act, or acting under a passion that was voluntarily aroused or sustained. These are listed before the general clause: "or if, according to common practice and canonical doctrine, another aggravating circumstance is present" (CCEO c. 1416 §1).²⁰ In such cases, the judge is required to impose more severe penalties, as emphasized by the phrase "*iudex debet reum gravius punire*" (CCEO c. 1416 §1). These penalties may include those specified in canon 1402 §3, such as privation of office, title, insignia, suspension for more than a year, demotion to a lower grade, deposition, or major excommunication. Furthermore, under the revised canon, any penalty that was previously optional becomes mandatory in these circumstances (CCEO c. 1416 §2).

The primary purpose of canonical penalties is to restore justice, reform the offender, and repair the scandal and harm caused by the offense.

²⁰ It is good to compare this with CIC can. 1326 §1, which states: "A judge must inflict a more serious punishment than that prescribed in the law or precept when: 1° a person, after being condemned, or after the penalty has been declared, continues so to offend that obstinate ill will may prudently be concluded from the circumstances; 2° a person who is established in some position of dignity, or who, in order to commit a crime, has abused a position of authority or an office; 3° a person who, after a penalty for a culpable offence was constituted, foresaw the event but nevertheless omitted to take the precautions to avoid it which any careful person would have taken; 4° a person who committed an offence in a state of drunkenness or other mental disturbance, if these were deliberately sought so as to commit the offence or to excuse it, or through passion which was deliberately stimulated or nourished." A fundamental question arises as to whether these extenuating and aggravating factors form part of the "common practice and canonical doctrine" referenced in CCEO canon 1416. If so, they could serve as a model for judges in the Eastern Catholic Churches when considering penalties. Additionally, as per CCEO canon 1499, in cases where the meaning remains doubtful or obscure, one may refer to parallel passages, the purpose and circumstances of the law, and the mind of the legislator, with the exception of those norms establishing a penalty (CCEO c. 1500).

Canon 1415 of the Code of Canons of the Eastern Churches affirms this by allowing a judge to forgo imposing a penalty if the desired outcomes can be achieved more effectively through alternative means.²¹ Additionally, the canon permits mitigating penalties when extenuating circumstances, as acknowledged by “common practice and canonical doctrine,” are present.

The CIC, particularly canon 1324, enumerates several extenuating circumstances that can lessen the penalty for an offense, such as diminished use of reason, acting under grave fear, or committing an act in the heat of passion. These provisions allow for reducing or substituting penalties, reflecting the Church’s acknowledgment of human weakness and the need for proportionality in punishment.²² At the same time, there are factors like grave fear, physical force, lawful self-defense, or ignorance of the law without personal fault, which take away complete liability for a delict (CIC c. 1323).²³

The recent amendments to the Code of Canons of the Eastern Churches did not bring significant changes regarding extenuating factors, despite opportunities for improvement when compared to the Code of Canon Law. The CCEO exempts only minors below fourteen from penalties (canon 1413 §1),²⁴ while the CIC offers greater clarity in canon 1322 by explicitly stating that those who habitually lack the use of reason, even if they appeared sane when violating a law or precept, are incapable of committing an offense. Although one might argue that this principle is implied in CCEO canon 1414 §1, which requires a deliberate act or seriously culpable omission of due diligence or seriously culpable ignorance for a violation to constitute a delict, the CIC provides additional exemptions not explicitly found in the CCEO. Incorporating such detailed norms into the CCEO during its

²¹ Unlike canon 1402 §1, canon 1415 does not include the restoration of justice among its stated purposes. Whether this omission was a deliberate choice or an oversight during the revision process—which added paragraph 1 to canon 1402 while leaving canon 1415 unchanged—remains unclear.

²² Canon 1345 of CIC further states: “Whenever the offender had only an imperfect use of reason, or committed the offence out of necessity or grave fear or in the heat of passion or, without prejudice to the provision of can. 1326 § 1 n. 4, with a mind disturbed by drunkenness or a similar cause, the judge can refrain from inflicting any punishment if he considers that the person’s reform may be better accomplished in some other way; the offender, however, must be punished if there is no other way to provide for the restoration of justice and the repair of any scandal that may have been caused.”

²³ However, CIC canon 1325 specifies that ignorance which is “crass, supine, or affected” cannot be used as an excuse under the provisions of canons 1323 and 1324.

²⁴ The Code of Canon Law exempts those below sixteen (CIC c. 1323, 1°).

amendment would have enhanced clarity and precision, fostering a more equitable application of penal law.

8.4. Prescription in Canonical Penal Norms

Prescription, as defined in canon 1540 of the CCEO, is a legal mechanism for acquiring or losing subjective rights and releasing oneself from obligations. In penal contexts, it serves as a limitation on the initiation of penal actions, providing a timeframe within which redress for an offense can be sought. According to canon 1152 §1, a penal action may be extinguished by the offender's death, by condonation granted by a competent authority, or by the passage of the prescribed time period. However, canon 1541 §1 specifies that for prescription to have any effect, it must be grounded in good faith throughout the entire prescribed period, in accordance with the provisions of canon 1152.

Pope Francis' *motu proprio Vos estis lux mundi* introduced significant modifications regarding the prescription of certain criminal offenses. While canon 1152 §2 generally provides that a penal action is extinguished after three years, notable exceptions exist. Offenses reserved to the Apostolic See, such as graver delicts under the jurisdiction of the Dicastery for the Doctrine of the Faith (DDF), prescribe only after twenty years. Additionally, specific offenses, including those addressed in CCEO canons 1449 (stealing, mal administration, unlawful alienation, etc), 1450 (homicide, abortion), 1451 (kidnapping, unjustly detaining, wounding or mutilating), 1453 §§1–4 and 6–7 (sexual offences of clerics and religious), 1463 (bribing or receiving gifts), 1464 (misuse of power, office, ministry or function), and 1466 (financial offences, posting bonds, trade, business by clerics or religious), and their counterparts in the Code of Canon Law, are subject to a seven-year prescription period. Prescription generally begins on the day the offense is committed or, in the case of permanent or habitual offenses, from the day it ceases (CCEO c. 1152 §4; CIC c. 1162 §2). However, the revised paragraph 4 of canon 1152 introduces flexibility by adding the clause "unless otherwise provided by law." For instance, graver delicts against morals committed by a cleric against minors, reserved to the Dicastery for the Doctrine of the Faith (CCEO c. 1453 §5; CIC c. 1398 §1), have a prescription period of twenty years, which starts only after the victim reaches the age of eighteen.²⁵

²⁵ See Norms on Delicts Reserved to the Congregation for the Doctrine of the Faith, 11 October 2021, art. 8 §2: https://www.vatican.va/roman_curia/congregations/

The newly added paragraph 3 of canon 1152 permits the interruption or suspension of the prescription period for up to three years if the offender is summoned before a tribunal in accordance with legal norms. Once the suspension concludes, either after three years or the end of the penal process, the prescription period resumes its course (CCEO c. 1152 §3; CIC c. 1362 §3). These provisions reflect the Church's dedication to justice while ensuring timeliness and safeguarding the faithful.

Conclusion

The balance between justice and mercy is central to the Church's mission of salvation. While proclaiming the Gospel to bring salvation to all, the Church must also administer justice in a manner that upholds divine truth and human dignity. This is particularly critical when addressing offenses by its members, including clerical misconduct and other *graver delicts*. The ecclesiastical penal system, as articulated in the Code of Canon Law and the Code of Canons of the Eastern Churches, is not solely punitive but aims to restore justice, repair harm, and promote reconciliation. Notably, the revised canons prioritize the restoration of justice as a fundamental purpose of punishment, emphasizing its indispensable role in addressing offenses.

In conclusion, the Church's mission requires harmonizing justice and mercy. Ecclesiastical penalties serve justice while extending mercy to those who genuinely repent, reflecting Christ's example. As Pope Francis reminds us, imposing a penalty can itself be an act of mercy when necessary to achieve its objectives. By restoring justice, fostering healing, and promoting reconciliation, the Church ensures its penal system contributes to renewal within the community. In doing so, it fulfills its divine mission and offers a powerful witness to God's love and the transformative power of the Gospel.