

THE ROLE OF THE PROMOTER OF JUSTICE IN SAFEGUARDING JUSTICE IN THE CHURCH

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Abstract

In the Church's trials and processes, especially in penal and contentious cases, whenever the public good is endangered, the promoter of justice intervenes as prescribed by the law or by the nature of the matter. His primary duty is to safeguard the public good. Every diocese must have a promoter of justice who can be appointed either permanently or on an *ad hoc* basis, for all cases or singular cases. Whenever the law requires their presence in any trial or procedure, the acts of the case become invalid if he or she is not summoned.

Keywords: Public good, penal cases, contentious cases, marriage nullity cases, canonical process.

Introduction

In the Church's legal system, the judge serves as *dominus* over the judicial process due to his neutrality, objectivity, and impartiality towards the subject of the trial and each party involved. His impartiality is further reinforced by the fact that his only partiality is towards the truth.¹ As Pius XII mentioned in his allocution to the Roman Rota on 2 October 1944, "the judge, who is as it were the personification of justice, his work reaches its climax in proclaiming the judgement, which certified and juridically determines the truth and gives it legal effect, both as regards the fact to be determined and the law to be applied. It is to this clarification and service of truth that

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¹ Cf. William L. Daniel, *The Art of Good Governance: A Guide to the Administrative Procedure for Just Decision-Making in the Catholic Church*, Wilson & Lafleur Ltée, Montréal 2015, 237-238.

the entire process is ordained as to its proper end".² This is further stressed by John Paul II in his address to the Tribunal of Rota on 4 February 1980, "in all ecclesiastical processes, the truth must always be, from the beginning to the judgement, the foundation, mother and law of justice".³

The procedural exercise of justice commits all who take part in the canonical process – judge, defender of the bond, promoter of justice, parties, witnesses and experts – "like the members of a body. Though each member has its proper function and activity, all are mutually coordinated and directed to the attainment of the same final object, that is, the well-being of the whole organism".⁴

In this *ministerium iustitiae*⁵ and *ministerium veritatis*⁶, the promoter of justice plays an important role in safeguarding public good within the Church, that is, he or she defends the rights of the ecclesial community and of canon law, when it is required by the procedural law or by the diocesan Bishop, or because of the nature of some matters requires it, such as the validity of judicial sentences, public ecclesiastical acts, the interests of public ecclesiastical bodies or persons. In short, he promotes the strict observance of the law for the common good.

1. Origin of the Office of the Promoter of Justice

The origin of the canonical figure of the promoter of justice is not well defined in the legal history of the Church. The Roman Law, the source of many canonical institutions, does not contain any reference to the institution of "promoter of justice" because popular action was used to prosecute criminals and, moreover, it did not distinguish between public and private rights in contentious cases. Hence, there was no need for an office responsible for promoting those causes.

The office of the promoter of justice has its roots in France in the 13th century. As the French monarchs appointed solicitors to defend their property and rights, and prosecute those who committed crimes, the

² Pius XII, Allocution to the Roman Rota, 2 October 1944, in William H. Woestman (ed.), *Papal Allocutions to the Roman Rota 1939-1994*, Theological Publications in India, Bangalore 2001, 25

³ John Paul II, Allocution to the Roman Rota, 4 February 1980, in William H. Woestman (ed.), *Papal Allocutions to the Roman Rota 1939-1994*, 159-160

⁴ Pius XII, Allocution to the Roman Rota, 2 October 1944, in William H. Woestman (ed.), *Papal Allocutions to the Roman Rota 1939-1994*, 29.

⁵ Paul VI, Allocution to the Roman Rota, 11 January 1965, in William H. Woestman (ed.), *Papal Allocutions to the Roman Rota 1939-1994*, 80.

⁶ John XXIII, Allocution to the Roman Rota, 13 December 1961, in William H. Woestman (ed.), *Papal Allocutions to the Roman Rota 1939-1994*, 70.

bishops created the office of the promoter *promotores episcopales* to prosecute heretics, and protect orphans, widows, and abandoned persons.⁷

Pope Lucius II (1181-1185), in the council held at Verona in 1184, to combat heresies, enjoined the bishops to make biennial visits to their dioceses and to have heretics denounced. He issued the bull *Ad abolendam* on 4 November 1184, giving powers to each Bishop to search for heretics on their own initiative through a personal investigation on the evidence of simple rumours, without waiting for a formal accusation and prosecuting them. This was the origin of the 'Inquisition'. Pope Innocent III (1198-1216) confirmed these provisions with the bull *Vergentis in senium*. The Fourth Lateran Council (1215), faced with the serious difficulties of the Albigensian Crusade, sanctioned the legitimacy of the investigations. Later, to prevent the inquisition from being carried out by the bishop himself, it was entrusted to the initiator or inquisitor. If the investigation was completed and cases were discovered against the suspect, the inquisitor, the officer in charge of this task, *formalized* the accusation. In the historical evolution of the institute, the inquisitor became a true judge, and the inquisition and accusation were entrusted to other officials: the instructor and the prosecutor of justice.⁸

During the time of Pope Gregory IX (1227-1234), the name 'promoter' was coined to describe the inquisitor. It developed into a stable office in the mid-13th century. Pope Benedict XIII established the Roman Curia's procurator general office on 12 June 1724 and gave it the responsibility of advancing appeals in criminal cases for the curias without procurators. Lastly, on 11 June 1880, the Sacred Congregation of Bishops and Regulars issued an Instruction imposing for the first time the figure of the promoter of justice in all the dioceses, requiring each curia to have a procurator for justice and for the protection of the law.⁹

Although the office and role of the promoter of justice were still largely undefined, its primary functions were the defense of the

⁷ Cf. Carmelo De Diego-Lora, "The Promoter of Justice, the Defender of the Bond and the Notary", in *Exegetical Commentary on the Code of Canon Law*, vol. IV/1, Wilson & Lafleur Ltée, Montréal 2004, 762.

⁸ Cf. Francisco J. Romos, *I Tribunali Ecclesiastici: Costituzione, Organizzazione, Norme Processuali, Cause Matrimoniali*, Pontificia Università S. Tommaso D'Aquino, Romae 2000, 176.

⁹ Cf. *Acta Sanctae Sedis* 13 (1880) 324, XIII: "Unicuique Curiae opus est Procuratore fiscali pro iustitiae et legis tutela."

treasury and the prosecution of crimes. Under threat of the sentence becoming null, they had to participate in criminal proceedings. This office of the promoter of justice was also extended to include contentious cases when dealing with the freedom of the Church, pious legacies, ecclesiastical goods, etc.¹⁰

The constitution of the promoter of justice became common in the 17th and 18th centuries, even without a law requiring it, but its function was changed. Since the inquisition itself had disappeared, the function of the prosecutor of justice was to promote the disciplinary and criminal cases of clerics and to protect the observance of the law in the conduct of trials.

The 1917 Code did not explain the function of the promoter of justice, but indirectly, speaking of the obligation of his presence, it said that he could be appointed: "in cases [...] in which the public good [...] can be called into question" (can.1586).¹¹ In the same Code, for the first time, the expression "promoter of justice" appeared to designate this office.

The Instruction *Provida mater* of 15 August 1936, published by the Sacred Congregation for the Sacraments, presented the figure of the promoter of justice as controlling the legality of the judge's implementation: "The promoter of justice must intervene when he himself accuses the marriage, and where it is a matter of protecting the procedural law" (Art. 16 § 1: art. 70-71).¹²

The office, which we now call "promoter of justice", had several names according to the time and place: *procurator curiae ad excessus corrigendos*, *procurator*, *promotor excessum*, *procurator fiscalis*, *defensor matrimonii*, *defensor vinculi*.¹³ All these antic names indicate the primary function of the promoter of justice: to safeguard the public good.

¹⁰ Cf. Carmelo De Diego-Lora, "The Promoter of Justice, the Defender of the Bond and the Notary", 763.

¹¹ CIC 1917/can. 1586 "Constituatur in dioecesi promotor iustitiae et defensor vinculi; ille pro causis, tum contentiosis in quibus bonum publicum, Ordinarii iudicio, in discrimen vocari potest, tum criminalibus; iste pro causis, in quibus agitur de vinculo sacrae ordinationis aut matrimonii".

¹² Congregation for the Sacraments, Instruction *Provida Mater*, servanda a tribunalibus diocesanis in pertractandis causis de nullitate matrimoniorum, 15 August 1936, in AAS 28 (1936) 317, Art. 16 § 1: "Promotor iustitiae intervenire debet cum ipse matrimonium accuset, et ubi de lege processuali tutanda agitur."

¹³ Cf. Francisco J. Romos, *I Tribunali Ecclesiastici: Costituzione, Organizzazione, Norme Processuali, Cause Matrimoniali*, 175.

2. Promoter of Justice in CIC 1983 and CCEO

2.1. Appointment of the Promoter of Justice

Can. 1430 prescribes, "A promoter of justice is to be appointed in a diocese for penal cases and contentious cases in which the public good may be at stake" (cf. CCEO/can.1094).¹⁴ Though the canon does not mention the appointing authority, it is stipulated later in can. 1435 (cf. CCEO/can. 1099) that the diocesan Bishop is the competent authority to appoint the promoter of justice.¹⁵

According to ca. 1435,¹⁶ it is an obligation on the part of the diocesan Bishop, or by the one equivalent to him (cf. cann. 368; 381§2), to appoint a promoter of justice in his diocese; in the case of inter-diocesan or regional tribunal, the bishops assigned as its moderator appoints the promoter of justice.¹⁷ In large dioceses with many cases that require the intervention of the promoter of justice, several may be appointed, or one may be appointed for contentious cases and the other for penal cases.¹⁸

According to can. 1436 §1,¹⁹ a single person can be named as both a promoter of justice and a defender of the bond (cf. CCEO/can. 1100

¹⁴ Cf. Pontifical Council for Legislative Texts, *Dignitas Connubii* Instruction to be observed by Diocean and Interdiocesan tribunals in Handling Causes of the Nullity of marriage, Libreria Editrice Vaticano, Città del Vaticano 2005, Art. 53 §1: "For all causes of the nullity of marriage, there must be appointed in each diocesan or inter-diocesan tribunal at least one defender of the bond and promoter of justice, with due observance of art. 34 concerning their nomination (cf. cann. 1430; 1432)." (= DC)

¹⁵ Cf. Juan Ignacio Arrieta (ed.), *Code of Canon Law Annotated*, Librairie Wilson & Lafleur, Chambly 2022, 1142: "According to CIC/17 can. 1589), the promoter of justice and the defender of the bond were appointed by the Ordinary. This gave rise to conflicting opinions as to whether the vicar general could appoint them or not. Now, since the word "Ordinary" has been amended to read "bishop", the doubts are dissipated".

¹⁶ Can. 1435 "It is the Bishop's responsibility to appoint the promoter of justice and defender of the bond. They are to be clerics or lay persons of good repute, with a doctorate or a licentiate in canon law, and of proven prudence and zeal for justice".

¹⁷ Can the diocesan administrator appoint a promoter of justice? Though he has the power of the diocesan bishop except where the nature of things or the law proscribes it (cf. can. 427 §1), can. 428 §1 notes that during the vacancy of the See, the principle *nihil innovetur* applies. According to the CIC/17 can. 1590 §1, when the episcopal see fell vacant, both the promoter of justice and the defender of the bond remained in office, and the vicar capitular could not remove them. It can be said that as a similar solution would pertain today. Cf. E. Caparros, M. Thériault, J. Thorn (eds), *Code of Canon Law Annotated*, 893.

¹⁸ Cf. E. Caparros, M. Thériault, J. Thorn (eds), *Code of Canon Law Annotated*, 890.

¹⁹ Can. 1436 §1 "The same person can hold the office of promoter of justice and defender of the bond, although not in the same case".

§1). This would most frequently occur in small dioceses, where qualified clerics and laypersons with the required academic credentials are scarce. This compatibility requirement of can. 1436 §1 (cf. CCEO/can. 1100 §1) is perfectly understandable because the two offices work toward the protection of the public good.²⁰ However, in a specific proceeding, if the same person holds the offices of both the defender of the bond and the promoter of justice, where the former defends a specific public interest, and the latter focuses on the same object of litigation from an angle of the public good, he will be contradicting himself in the exercise of his both offices. For example, in marriage cases, when the promoter of justice attacks the validity of marriage (cf. can. 1674 §1, 2^o), the defender of the bond opposes the declaration of nullity. For this reason, while establishing the compatibility of the appointment and exercise of each office by the same person, can. 1436 §1 (cf. CCEO/can. 1100 §1) prescribes the incompatibility of the same person exercising both offices in the same case.²¹

The first clause of can. 1436 §2²² (cf. CCEO/can. 1100 §2) refers to two possible forms of appointing a promoter of justice: *ad universitatem causarum* or *ad singulas causas*. Strictly speaking, only the appointment made *ad universitatem causarum* is compatible with the ecclesiastical office, which requires the requisite of stability (cf. can. 145 §1; CCEO/can. 936 §1)). In addition, the imperative term "*constituatur*" of can. 1430 (cf. CCEO/can. 1094) refers to those appointed *ad universitatem causarum*. On the other hand, those appointed *ad singulas causas* do not fulfil the obligatory requirement of the constitution of the office of the promoter of justice prescribed by can. 1430 (cf. CCEO/can. 1094), although the appointment may be for various cases, which may have a long duration. Therefore, the promoter of justice may be assigned to all cases in general or to just one when the stable promoter is unavailable.²³ For each office to carry out its public duties

²⁰ Cf. Pio Vito Pinto, *I Processi nel Codice di Diritto Canonico*, Libreria Editrice Vaticana, Città del Vaticano 1993, 121-122.

²¹ Cf. *Dignitas Connubii*, Art. 53 §3: "The same person, but not in the same cause, can carry out the office of defender of the bond and promoter of justice (cf. can. 1436 §1)"; Cf. John D. Faris, Jobe Abbass (eds), *A Practical Commentary to the Code of Canons of the Eastern Churches*, vol. II, Librairie Wilson & Lafleur, Chambly 2072-73.

²² Can. 1436 §2 "The promoter of justice and the defender of the bond can be appointed for all cases, or for individual cases. They can be removed by the Bishop for a just reason".

²³ Cf. John D. Faris, Jobe Abbass (eds), *A Practical Commentary to the Code of Canons of the Eastern Churches*, vol. II, 2071.

with the highest level of professional competence and independence, the actual stability of the office must match a certain stability of appointment.²⁴

2.2. Qualifications for the Promoter of Justice

Can. 1435 §1 states that the promoters of justice are to be “clerics or lay persons of good repute, with a doctorate or a licentiate in canon law, and of proven prudence and zeal for justice” (cf. CCEO/can. 1099 §2).

The canon stipulates the necessary qualities required for the appointment of the promoter of justice. First, “They are to be clerics or lay persons”.²⁵ It does not, however, imply that other faithful, such as religious, whether or not they are clerics, are excluded from these positions. If they meet the canon’s requirements for professional ability and moral character, religious can also be appointed with the proper approval of their lawful superiors. The canon includes men and women since it generally refers to lay people.

Second, “of good repute”: The Bishop must gather written or verbal information from reliable sources and from trustworthy Christ’s faithful in order to determine the good reputation of the promoter of justice.

Third, “with a doctorate or a licentiate in canon law”: The academic degree required for judicial vicars, associate judicial vicars, and diocesan judges (cf. cann. 1420 §4 and 1421 §3; CCEO/cann. 1086 §4; 1087 §3) is also required for the promoter of justice. This requirement guarantees the capacity or aptitude for the technical-judicial functions required by the office of the promoter of justice.²⁶ If a person with these academic qualifications is not available, one who is well versed in these matters and who has already had experience could well be considered – with, if needs be, the appropriate dispensation from the Apostolic Signatura.

Fourth, “of proven prudence and zeal for justice”: The qualities of prudence and zeal for justice signify an exercise of moral virtues

²⁴ Cf. Carmelo De Diego-Lora, “The Promoter of Justice, the Defender of the Bond and the Notary”, 798.

²⁵ Can. 1589 §1 of the 1917 Code reserved this office to priests: “It is for the Ordinary to select the promoter of justice and defender of the bond; [these] shall be priests of intact reputation, doctors of canon law or otherwise expert, and proven for prudence and zeal for justice”. Cf. *Communicationes* 10 (1978) 239, can. 35 §1.

²⁶ Cf. Carmelo De Diego-Lora, “The Promoter of Justice, the Defender of the Bond and the Notary”, 794.

whose evaluation depends on the bishop who makes the appointment.

Can. 1435 §1 does not mention the requirement of communion with the Church, which is a requirement to be promoted to an ecclesiastical office (cf. can. 149 §1).

This communion is demonstrated specifically in the adherence to the teachings and rules of the Church, the practice of the sacraments, submission to the authorities and the practice of exemplary charity in the community where the chosen person lives. Therefore, if a lay person is in an unusual marital situation, or has abandoned his/her children, or is under some canonical punishment, he or she cannot be appointed to a ministry of procedural protection of the public ecclesiastical good.²⁷

There is no mention of an age limit to be appointed as a promoter of justice. Since the canon mentions the qualities of good reputation, prudence and zeal for justice as requirements for those who hold this office, which are also the same for a judicial vicar, in an analogy, the age requirement for the judicial vicars, i.e. thirty years, may also be applied to the promoter of justice (cf. can. 1420 §4; CCEO/can. 1086 §4).

Can. 1436 §2 does not mention the prescription period of appointment of the promoter justice by the bishop (cf. CCEO/can. 1100 §2). This means that the time period is left to the discretion of the bishop. Nonetheless, as ministers of the tribunal of justice, upon whom fall public responsibilities very similar to responsibilities of judicial vicars and ecclesiastical judges in general, the requirements established in can. 1422 (cf. CCEO/can. 1088 §1) for appointments of a determined time period may also apply for the appointment of promoter justice.

2.3. Removal of the Promoter of Justice

Can. 1436 §2 stipulates that the promoter of justice can be removed by the bishop for *iusta de causa* (cf. CCEO/can. 1100 §2). Such cause will be determined by the bishop in each case. In general, all removals from office require just cause proportionately serious and must be done in accordance with procedures determined by law (cf. can. 193 §§ 2-3; CCEO/can. 975 §§1,2).²⁸ The Bishop must explain in his decree the just cause and the reasons for removal, at least in a summary form. In

²⁷ Cf. Carmelo De Diego-Lora, "The Promoter of Justice, the Defender of the Bond and the Notary", 795.

²⁸ Cf. John D. Faris, Jobe Abbass (eds), *A Practical Commentary to the Code of Canons of the Eastern Churches*, vol. II, 2073.

addition, as can. 193 §4 expressly prescribes that the decree of removal, in order to be effective, must be given in writing. If the removal is done without a just cause, the removal is unlawful but valid. The Code prescribes the possibility of a hierarchical recourse (cf. cann. 1732 ff; CCEO/can. 996 ff) and a contentious administrative recourse at the Apostolic Signatura. Since the canon does not mention any special process for removal, the general canons apply (cf. cann. 192-196).²⁹

If the promoter of justice is appointed for a single case, he will lose office once the case is closed.

When the diocesan see is vacant, like the judicial vicars and judges, the promoters of justice do not cease from office. The diocesan Administrator has no power to remove the promoter of justice. On the coming of the new Bishop, he or she must be confirmed in office (cf. can. 1420 §5; CCEO/can. 1088 §3).

2.4. Object of the Office of Promoter of Justice

Can. 1430 prescribes, “A promoter of justice is to be appointed in a diocese for penal cases and contentious cases in which the public good may be at stake. The promoter is bound by the office to safeguard the public good” (cf. CCEO/can. 1094).

According to this canon, the specific function of the promoter of justice is to foster and safeguard the public good, i.e., the good of the Church, its rights and obligations, the general good of the community and also to guarantee the observance of law and justice. His intervention is always necessary in the context of the penal (judicial) process, where he has the exclusive competence of carrying out the criminal action by presenting the accusatory petition to the judge, as well as in the context of a contentious case, if the public good is or could be in danger.³⁰ For this reason, it is obligatory that such an officer be appointed in each diocese (cf. also, can. 1435; CCEO/can. 1099).

The intervention of the promoter of justice is required:³¹

- a) *in all penal cases*, since the offences under investigation are of their nature, a disruption of due order and discipline in the

²⁹ Cf. Juan Ignacio Arrieta, *Codice Di Diritto Canonico e Leggi Complementari Commentato*, Coletti a San Paolo, Roma 2004, 959.

³⁰ Cf. Claudio Papale, *I Processi: Commento ai Canoni 1400-1670 del Codice di Diritto Canonico*, Urbaniana University Press, Città del Vaticano 2017, 62.

³¹ John P. Beal, James A. Coriden, Thomas J. Green (eds), *New Commentary on the Code of Canon Law*, Theological Publications in India, Bangalore 2003, 1629: “The

community; in these cases, the promoter of justice acts as the plaintiff (cf. can. 1721 §1; CCEO/can. 1472).³²

b) *In those contentious cases in which the public good may be at stake:* while contentious cases are in themselves private, a number of them can be such as to affect also the public good, e.g., cases concerning juridical persons, those concerning persons under age or of impaired mental capacity, etc. In fact, the intervention of the promoter of justice is determined in the following situations (cf. can. 1431 §1;³³ CCEO/can. 1095 §1;):

- When the law itself prescribes it, e.g. cann. 1431 §1;³⁴ 1674 §1,2^o;³⁵ 1696³⁶ (cf. CCEO/cann. 1095 §1; 1360, 2^o; 1382).

promoter of justice is involved in all penal cases and in those contentious cases in which the public welfare is involved. The public welfare is involved (1) when the bishop decides it is (as, for example, when a quarrel between two priests over the possession of an office is judged to have become sufficiently public as to have caused considerable scandal), or (2) when the law says it is (as, for example, when c. 1691 indicates that the public good is involved in all marriage nullity cases and when c. 1696 declares that any separation case involves the commonweal), or (3) when the matter is obviously public (as, for example, when it is a highly publicized matter involving well-known people".

³² Cf. John D. Faris, Jobe Abbass (eds), *A Practical Commentary to the Code of Canons of the Eastern Churches*, vol. II, 2062: "In penal cases, the distinction of the roles of judge and promoter of justice is evident. For the judge investigates and declares the alleged commission of the delict, but he may take no accusatory initiative. It is the promoter of justice as the representative of the public good who accuses one of the committing a delict, thus standing trial as the petitioner (CCEO/cann. 1104 §2; 1472; CIC/cann. 1501; 1721); he is juridically capable of doing this because delicts, by their nature, cause disturbance to the public order, while their punishment is effective in restoring order and repairing scandal. In addition to enjoying all the procedural rights of a party (CCEO/can. 1098; CIC/can. 1434), he must be heard by the hierarch about even beginning a penal process and, if so, what kind – judicial or extrajudicial (CCEO/can. 1469 §3; CIC/can. 1718 §3) – and about imposing cautionary measures (CCEO/can. 1473 CIC/can. 1722); he may renounce a judicial penal cause (CCEO/can. 1475 §1; CIC/can. 1724 §1); he takes part in both the judicial and extrajudicial discussion (CCEO/cann. 1477 §1; 1486 §1, 2^o; CIC/can. 1720, 2^o); and he has a right to challenge the sentence (CCEO/can. 1481 §2; CIC/can. 1727 §2)".

³³ Cf. DC, art. 57 §3.

³⁴ Can. 1431 §1 "In contentious cases, it is for the diocesan Bishop to decide whether the public good is at stake or not unless the law prescribes the intervention of the promoter of justice, or this is clearly necessary from the nature of things".

³⁵ Can. 1674 §1 "The following are qualified to challenge a marriage: 2^o the promoter of justice when nullity has already become public, if the convalidation of the marriage is not possible or expedient".

³⁶ Can. 1696 "Cases of separation of spouses also concern the public good; the promoter of justice must, therefore, always intervene, in accordance with can. 1433".

- Can. 1431 §2³⁷ indicates one of the cases in which the promoter's intervention is required by law: if in the previous instance he intervened, his or her intervention is also necessary in the next level.
- When it "is clearly necessary from the nature of things": it would appear that it is for the judge in the case to decide whether or not this clear necessity is verified (cf. can. 1431 §2; CCEO/can. 1095 §2).
- In the absence of either of the above situations, the diocesan Bishop himself decides, in view of the actual circumstances within his jurisdiction, that the case in question is such as to put the public good at stake: in this context, the question of public scandal could well be a determining factor.³⁸

2.5. Rights and Obligations of the Promoter of Justice

1. *Trials in General:*

- i) When the promoter of justice has been involved "at an earlier instance of a trial", it is presumed that this intervention will be "necessary at a subsequent instance" (cf. can. 1431 §2; CCEO/can. 1095 §2);
- ii) Can. 1433: "In cases in which the presence of the promoter of justice [...] is required, the acts are invalid if they were not summoned. This does not apply if, although not summoned, they were in fact present or, having studied the acts, were able, at least before the judgement, to fulfil their role".³⁹

According to this canon, if a case requires the presence and the intervention of the promoter of justice, it is indispensable that he/she be officially summoned to attend every formal act of the court at which their presence is required by law. If they are not summoned, acts of the procedure, e.g. the examination of the parties or of the witnesses, become invalid and they will not taken into consideration by the court in making its decision.⁴⁰

³⁷ Can. 1431 §2 "If the promoter of justice has intervened at an earlier instance of a trial, this intervention is presumed to be necessary at a subsequent instance".

³⁸ Gerard Sheehy, Ralph Brown, Donal Kelly, Aidan McGrath (eds), *The Canon Law – Letter & Spirit*, Geoffrey Chapman, London, 1995, 830-831.

³⁹ Cf. DC, art. 60.

⁴⁰ Cf. John D. Faris, Jobe Abbass (eds), *A Practical Commentary to the Code of Canons of the Eastern Churches*, vol. II, 2068.

The canon prescribes that the promoter of justice be summoned, not that he or she be present. The act would be entirely valid and effective, for instance, if the promoter of justice had been called but, for a reasonable cause, was unable to attend or chose not to attend the particular act of the procedure. The objective of the rule is to guarantee that no official judicial action occurs without summoning the promoter of justice with formal advance notice. However, the rule does not apply if they were present under their own initiative, even if they were not summoned, or if they were given the proper time to examine and review all pertinent acts of the case before the publication of the sentence (cf. CCEO/can. 1097);⁴¹

- iii) "Whenever the law directs that the judge is to hear the parties or either of them", the promoter of justice must also be given the opportunity to be heard, provided they are engaged in the same trial (cf. can. 1434, 1^o; ⁴² CCEO/can. 1098, 1^o); so also, whenever in the course of the trial the judge is requested by one of the parties to determine a particular issue, e.g., an incidental matter (cf. can. 1587-1591; CCEO/cann. 1267-1271), the promoter of justice must be invited to comment, and their observations are to be given "equal weight" to that of the party's request (cf. can. 1434, 1^o; CCEO/can. 1098, 1^o);⁴³
- iv) As a member of the tribunal, the promoter of justice must take an oath to exercise his or her office properly and faithfully (cf. can. 1454; CCEO/can. 1112);
- v) To maintain the impartiality and objectivity of the tribunal and to remain at all times above suspicion, the promoter of justice is prohibited from accepting any gifts on the occasion of a trial (cf. can. 1456; CCEO/can. 1114).

⁴¹ Cf. Gerard Sheehy, Ralph Brown, Donal Kelly, Aidan McGrath (eds), *The Canon Law – Letter & Spirit*, 831-832.

⁴² Can. 1434 "Unless otherwise expressly provided: 1^o whenever the law directs that the judge is to hear the parties or either of them, the promoter of justice and the defender of the bond are also to be heard if they are present"; DC, art. 59, 2^o.

⁴³ Cf. Gerard Sheehy, Ralph Brown, Donal Kelly, Aidan McGrath (eds), *The Canon Law – Letter & Spirit*, 832

2. *In contentious trials:*

- i) In cases involving public good, the promoter of justice has the right to submit a plea to the judge, drawn up in accordance with the law (cf. can. 1501);
- ii) For the interrogation of the parties, the promoter of justice may submit propositions to the judge upon which a party may be questioned (cf. can. 1533; *CCEO*/can. 1214);
- iii) During the examination of the witness, if the promoter of justice is present and has additional questions to put to the witness, the questions have to be proposed not to the witness but to the judge or to the one who is taking the judge's place (cf. can. 1561; *CCEO*/can. 1242);
- iv) After the definitive conclusion of the case and before pronouncing the judgement, the judge must seek the observations of the promoter of justice, assigning a suitable period of time (cf. can. 1601; *CCEO*/can. 1284);
- v) When the case has been concluded, and the parties are given time to present their pleadings and observations, the promoter of justice has the right to respond to every submission and reply of the parties (cf. can. 1603 §3; *CCEO*/can. 1286 §3);
- vi) If either or both parties feel aggrieved by the judgement, they can lodge a plaint of nullity. So, too, may the promoter of justice if involved in the case (cf. can. 1626 §1; *CCEO*/can. 1307 §1);
- vii) Like the parties, the promoter of justice also has the right to make an appeal against a judgement to a higher judge (cf. can. 1628; *CCEO*/can. 1309). The promoter of justice also has the right to renounce the appeal (cf. can. 1636 §2; (cf. *CCEO*/can. 1317 §2).

3. *In Marriage trials:*⁴⁴

- i) In the cases concerning the nullity of marriage, the promoter of justice can also challenge the legal presumption of the validity of a marriage before a competent ecclesiastical tribunal, but only in exceptional circumstances where the following two situations are verified concomitantly: "i) the fact

⁴⁴ Cf. Peter Akpoghiran, *Mitis Iudex Text and Commentary*, Guadalupe Book Publishers, New orleans 2021, 199-201.

- of nullity must already have become so publicly known that the public good may, in the promoter's judgement, be involved; b) it must be impossible, or at least not expedient, to validate the marriage"⁴⁵ (cf. 1674 §1, 2^o; CCEO/can. 1360, 2^o);⁴⁶
- ii) To take part in the process if the promoter of justice has challenged the validity of marriage;⁴⁷
 - iii) To be rendered with the rights and obligations of a petitioner whenever the promoter of justice impugned the validity of a marriage;⁴⁸
 - iv) To participate in the process by virtue of the decree issued by the judge;⁴⁹
 - v) To be present, if involved in a trial, at the examination of the parties, the witnesses and the experts and also to inspect the judicial acts even before publication and to examine documents produced by the parties (cf. can. 1678 §1; CCEO/can. 1364 §1);
 - vi) To safeguard the matrimonial procedural law, especially when the question concerns the nullity of the acts or exceptions;
 - vii) To be heard whenever the law requires the judge to hear the parties or one of them or whenever a request by a party is required in order for the judge to decide on a matter regarding the case unless some other provision has been expressly made and provided the promoter of justice is taking part in the trial (cf. can. 1434, 1^o, 2^o);⁵⁰
 - viii) To sign the record of evidence prepared by the notary at the conclusion of the depositions of a party, witness, or expert if the promoter of justice was present during the examination (cf. can. 1569 §2);⁵¹

⁴⁵ Cf. Gerard Sheehy, Ralph Brown, Donal Kelly, Aidan McGrath (eds), *The Canon Law – Letter & Spirit*, 934.

⁴⁶ Cf. DC, art. 92 §1, 2^o.

⁴⁷ Cf. DC, art. 57 §1.

⁴⁸ Cf. DC, art. 58.

⁴⁹ Cf. DC, art. 57 §2.

⁵⁰ Cf. DC, art. 59, 1^o, 2^o.

⁵¹ Cf. DC, art. 175 §2.

- ix) To receive a copy of the sentence if the promoter of justice has participated in the process;⁵²
- x) To appeal from the sentence to the higher judge if aggrieved by it, provided the promoter of justice has participated in the process (cf. can. 1628);⁵³
- xi) To refrain from the exercise of his or her office as the promoter of justice in a case in which some sort of founded suspicion of favouritism, possible financial profit or loss, has been proposed against him or her (cf. can. 1448 §2);⁵⁴
- xii) To be summoned in cases of separation of spouses which concern public good. If he or she is not summoned and did not, in fact, fulfil his role, the acts of the case are null (cf. cann. 1696; 1433; CCEO/cann. 1382; 1097).

4. *In penal trials*:⁵⁵

- i) When an Ordinary issues a decree that a judicial penal process must be initiated, he hands over the acts of the investigation to the promoter of justice who, as the plaintiff in that case (cf. can. 1501), will present to the judge a formal petition drawn up according to the norm of cann. 1502 and 1504 (cf. can. 1721 §1; CCEO/cann. 1185; 1187; 1472 §2);
- ii) If the case is appealed to a higher tribunal, the promoter of justice appointed for that higher tribunal becomes the plaintiff. The first promoter of justice has no role in this case (cf. can. 1721 §2; CCEO/can. 1472 §2);
- iii) At any stage of the process, if the Ordinary wants to prohibit the accused from exercising the sacred ministry or some ecclesiastical office and position, imposing or forbidding residence in a certain place or territory, or even prohibiting public participation in the blessed Eucharist, he must consult the promoter of justice (cf. can. 1722; CCEO/can. 1473);
- iv) After getting the direction or consent of the Ordinary, the promoter of justice can renounce the instance in any grade of the trial (cf. can. 1724 §1; CCEO/can. 1475 §1);

⁵² Cf. DC, art. 258 §2.

⁵³ Cf. DC, art. 279 §1.

⁵⁴ Cf. DC, art. 67 §2.

⁵⁵ Cf. John D. Faris, Jobe Abbass (eds), *A Practical Commentary to the Code of Canons of the Eastern Churches*, vol. II, 2062.

- v) As the plaintiff in the case and as the one specially charged with safeguarding the public good (cf. can. 1430; CCEO/can. 1094), the promoter of justice can also appeal if he or she considers that either the scandal caused by the offence or the restitution of justice has not been adequately provided for (cf. can. 1727 §2; CCEO/can. 1481 §2);
- vi) The promoter of justice has an obligation to swear an oath to always observe the secret of the office (cf. can. 1455 §1; CCEO/can. 1113 §1).

2.6. Limitations on the Office of the Promoter of Justice

According to can. 1447,⁵⁶ a promoter of justice in a particular instance is prohibited from validly acting as a judge or as an assessor in a later instance of the same case (cf. CCEO/can. 1105). The procedure is a single one, although there may be different instances. However, the same promoter of justice can act in two instances in the same case. This situation occurs when he or she consents to act in a superior court of appeal in the same role and with the same procedural position of action or opposition as was carried out in the first instance. If he attempts to change the procedural position in the second instance from that of the first instance, he can be removed from his office.

In order to guarantee the impartiality and integrity of the tribunal's operations, like all the major officials of the tribunal, the promoter of justice also has to abstain from dealing with cases in which he or she may have a personal interest by reason of consanguinity or affinity in any degree of the direct line and up to the fourth degree of the collateral line or by reason of trusteeship, guardianship, close acquaintance, great animosity, the making of a profit, or the avoidance of a loss (cf. can. 1448 §1;⁵⁷ CCEO/can. 1106 §1).

Conclusion

The role of the promoter of justice is vital in reinforcing the Church's commitment to justice and protecting individuals' rights. By

⁵⁶ Can. 1447 "Any person involved in a case as judge, promoter of justice, defender of the bond, procurator, advocate, witness or expert cannot subsequently, in another instance, validly determine the same case as a judge or exercise the role of assessor in it".

⁵⁷ Can. 1448 §1 "The judge is not to undertake the hearing of a case in which any personal interest may be involved by reason of consanguinity or affinity in any degree of the direct line and up to the fourth degree of the collateral line, or by reason of guardianship or tutelage, or of close acquaintanceship or marked hostility or possible financial profit or loss".

advocating for the public good and ensuring that justice is served, the promoter helps to maintain the Church's moral authority and credibility. This position reflects the Church's understanding of justice as not merely a legalistic concept but as a fundamental aspect of its mission to uphold the dignity of every person, consistent with the teachings of the Gospel. In summary, the promoter of justice serves as a guardian of justice within the Church, ensuring that legal processes are conducted fairly, that the rights of individuals are respected, and that the public good is prioritized in all ecclesiastical matters. This role is essential for fostering a just and equitable environment within the Church's judicial framework.