

Practical Guide to Canonical Administrative Procedure in Penal Matters

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Abstract: The first part of this guide summarizes some basic concepts and elements of penal canon law. The second illustrates one possible way of proceeding administratively in penal matters. The appendix offers an outline of some possible singular decrees, prior to the procedure of imposing a penalty.

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1.1.1. *Function of pastoral governance and canonical penalties.* The governance function of the sacred pastors includes the power to impose proportionate sanctions to protect relevant ecclesial values, when required by the common good of the Church. Canon 1311 §1, incorporating an affirmation already present in the former CIC and throughout the canonical tradition, proclaims: «The Church has the original and proper right to punish with penal sanctions the faithful who commit crimes».

The qualifications “original” and “proper” indicate here, among other things, that it is not a right received from another human authority, nor from an imitation of legal systems alien to the Church. On the contrary, the aims that legitimize the existence of a penal system provided in every society (cf. CCC, 2266) are also found to be relevant in the Church, if one thinks of the responsibility of the sacred pastors.

They have a duty to ensure the integrity of communion in the faith, in the cult and in the regime - essential elements of the common ecclesial good: that is to say, of the set of conditions necessary to make it possible to reach the aim of the Church - as well as other values of special human and Christian transcendence, protecting them, even coercively when necessary. Logically, the concrete manifestations of this dimension of the pastoral function of governance must always reflect the proper nature of the Church.

1.2. *Power and duty of the sacred pastors.* The coercive power, for its own nature, entails at the same time a duty. Its exercise does not respond, naturally, to a reprehensible desire for revenge; nor does it imply a lack of understanding and mercy, nor does it presuppose the proud and distant attitude on the part of those who are considered unable to fall. On the contrary, it must be carried out with humility and gentleness, with paternal solicitude devoid of all arrogance, with prudent discernment and a keen sense of responsibility.

With regard to this last aspect, we must not forget that it is not a juridical faculty of free authority, simply destined to expand the personal juridical sphere of its holder (as would happen with certain privileges, which could be exercised or not: cf., e.g., c. 80 §2), but of a public power which can not be renounced, belonging to the pastoral office, which is received with all the set of attributions proper to it as a necessary instrument - together with the other resources of pastoral charity - in order to effectively and responsibly fulfill the mission of governance, when certain circumstances occur.

In all penal proceedings, one should always seek primarily to restore justice, that is, to attend to the spiritual and material wounds caused by the crime, eradicating or neutralizing their cause and repairing them, to the extent allowed by the juridical powers of the pastor (undoubtedly, other means can and should be used simultaneously or successively, which accompany and complement, but can not replace the prosecution - except in cases stipulated by the Legislator when this might be the required response). At the same time, efforts should be made to mend the culpable person, his salvation. Finally, one must also seek the reparation of the scandal - especially avoiding, not only among the faithful - the spread of doubts, ambiguities or confusion about the attitude of the Church with respect to certain behaviors that falsify her truth and hurt her image.

For these reasons, "in the image of a Church that protects the rights of each faithful, and that - even more - promotes and protects the common good as an indispensable condition for the integral development of the human and Christian person, the penal discipline features positively: also the penalty imposed by the ecclesiastical authority (...) should be considered as an instrument of communion, that is, as a means to recover those deficiencies of the individual good and common good that have emerged with anti-ecclesial, criminal and scandalous behaviors of the members of the people of God "(John Paul II, Address to the Roman Rota, 1979).

1.3. *Penal action in the context of pastoral activity.* Canon 1341 establishes that the Ordinary must initiate the process for imposing a penalty "only when he has seen that fraternal correction, reproof or other measures of pastoral solicitude is not enough" to achieve the aims mentioned above. The imposition of sanctions is thus considered a recourse of pastoral solicitude for especially serious situations. In fact, the character of last resort, an extreme recourse that is attributed to penal law in all legal order assumes a specific intensity in canon law, derived from its pastoral character.

However, "it is appropriate to pause to reflect on a misunderstanding, perhaps understandable, but no less harmful, that unfortunately and frequently conditions the vision of the pastorality of ecclesial law. This distortion consists in attributing scope and pastoral intentions uniquely to those aspects of moderation and humanity that can relate directly to the canonical equity, that is to say, it consists in sustaining that only the exceptions to the laws, the avoidance of recourse to processes and canonical sanctions, and the reduction of juridical formalities, really have pastoral importance. In this way, it is forgotten that justice and the strict laws, and therefore the general rules, processes, sanctions and other typical manifestations of legality, always necessary in the Church, are required in the Church for the good of souls and are therefore inherently pastoral realities" (John Paul II, Discourse to the Roman Rota, 1990).

In fact, when situations arise that require by their nature a penal action, it is a manifestation of the commitment of the Good Shepherd to pursue it with prudent prudence, tempered strength, and justice quickened by charity towards God, towards his Church, towards the flock entrusted to him and towards the protagonist of the behavior perhaps criminal. The omission of that duty could even constitute a specific offense (cf. c.1989).

It is, however, a field of extremely delicate pastoral responsibility, both for the effects of the measures adopted on specific people, and for their significance and possible public resonance. This, coupled with the fear of error, for lack of familiarity with the technical elements of canonical penal law in order to act in an adequate way, can in a number of cases foster an insecurity that leads to avoiding recourse to penal measures, even in situations in which the "other means of pastoral solicitude" mentioned in c. 1341 would constitute clearly an insufficient and inadequate response to tackle and heal the damage caused to the faithful - without excluding the delinquent himself - and to the Church.

The observance of canonical provisions in this matter guarantees, to a large extent, to those who have received this responsibility, that their action would be upright, effective, proportionate, respectful of the dignity of the faithful and attentive to the value of the ecclesial good to be protected. This brief guide aims to facilitate the interpretation and application of penal law in the cases that require it. To this aim, it offers

a synthesis of the main concepts and norms, and seeks to suggest appropriate ways of proceeding to protect, as far as possible, all the good at stake.

2. THE DELICT AS NECESSARY PRESUPPOSITION OF THE PENALTY

2.1. *Distinction between sin and delict.* Not every moral (sinful) or juridical violation is properly a delict. Only certain external behaviors with a special negative impact on the life of the Church and the faithful are qualified in law as a delict and punished proportionately, in accordance with the stated purposes (see 1.1 and 1.2).

- In order for a delict to exist:
 - An *external violation* of a law or precept is required (c.1321 §1).
 - That this external violation is gravely imputable to its perpetrator or perpetrators (*ibid.*).
 - That the violation committed is classified as a delict and punished with a penalty by a juridical norm (cf. c. 1321 §2).

2.2. *External violation of a law or precept* (cf. cc 1315 and 1319, see 2.4). It is understood that a violation is external when it does not consist only of internal acts (thoughts, plans, desires, etc.), which have no juridical relevance, even though they may be morally reprehensible.

- The external violation can be completed or not completed:
- When, with the intention of committing an offense, acts have been carried out that by their very nature are aimed at achieving the criminal result, but the crime is not completed because of causes beyond the control of the perpetrator; this is a frustrated delict (cf. 1328 §1).
- If the non-completion is due to the fact that the perpetrator did not use the appropriate means to achieve the intended criminal outcome, or that the person voluntarily desisted before reaching that result, this is an attempt to commit a delict (cf. 1328 §2).
- In general, canon law punishes only completed delict.
- Both the frustrated delict and the attempt can be punished with penalties lesser than that established for the completed delict, or with a penance or a penal remedy in its place (see 1328, 1339-1340, see 3.3).

2.3. *Grave imputability.* Having "imputability", in a juridical sense, means that the responsibility for a criminal conduct is formally attributable (i.e., as a delict, not only as material conduct) to its perpetrator (and co-perpetrators and accomplices, as provided for in canon 1329).

2.3.1. *Deliberation and voluntariness.* In order for an imputable criminal conduct to be punishable, it is necessary, according to c. 1321 §1, that the imputability is grave. Therefore, it is punishable only if, to the extent that it is possible to determine externally, it can be established that the subject has acted with sufficient deliberation and voluntariness so that the imputability can be classified as grave (in practice, using criteria similar to those used by moral science regarding sin).

- Those who habitually lack the use of reason, even if they have violated a penal norm while seemingly sane, are considered to be incapable of a delict (cfr. c. 1322).

2.3.2. *Intent and fault.* A violation may be imputable by intent, which in the penal sphere means a deliberate intention to infringe upon the norm in question (not necessarily deception, as in other areas of law); or by fault, that is, by omission of due diligence (cf. 1321 §1).

- The penalty provided by the law for a violation applies only if the conduct was intentional. On the other hand, if the violation is by fault, it must be punished with a penalty lower than that foreseen (cf. 1321 §2).

2.3.3. *Circumstances that modify imputability.* The CIC regulates a series of circumstances that modify the imputability: exemptions which do not incur any penalty (cc. 1323 and 1325); mitigating factors which allow for the imposition of minor punishments or substitute them by a penance (cc. 1324-1325); and aggravating factors which increase the penalty (c.1326).

- In addition, particular law may establish other factors that are extenuating, mitigating or aggravating. Penal precept may do the same (see 2.4), but only for the concrete case to which it refers (cf. c. 1327). These circumstances must be assessed at the time of imposing the penalty (usually not before, so that it could be recorded that the proceeding has been carried out according to the law: see 2.3.6; 8.3).

2.3.4. *Extenuating factors and penalties «latae sententiae».* Penalties *latae sententiae* (see 3.1.1) are incurred when the requirements established by the law are imposed *ipso facto* on the person who commits the delict, without the need for any procedure for their imposition. However, the perpetrator would not incur these penalties when there is an extinguishing circumstance, as in other penalties, or a simple mitigating factor (cf. 1324 §3).

2.3.5. *Assumptions of ignorance that do not excuse.* Canon 1325 explicitly establishes that crass, supine or affected ignorance, among others, are never extinguishing or extenuating circumstances. These are the three types of vincible ignorance that the subject does not overcome either by negligence, disinterest or malice (malicious ignorance is positively required because, in case of overcoming it, the subject could get to know exactly the obligations or prohibitions that he does not want to fulfill and prefers to ignore them).

2.3.6. *Time at which the extenuating and mitigating factors should be assessed.* In general, except for obvious cases which exclude all imputability, it is preferable that these circumstances be assessed in the context of the corresponding penal process or proceedings (see 7 and 8) should it be initiated (see c. 1718) so that the acquittal or condemnation is carried out with the necessary guarantees.

- During the preliminary investigation (see 6) it is sufficient to determine whether the fact is, in principle, imputable; or, to put it in another way (more precisely in practice), if it is not clearly not imputable. It must be kept in mind that if the violation has been committed, the law presumes (unless it proves to the contrary) that it is imputable (cf. 1321 § 3), which would allow for criminal prosecution. However, this presumption of imputability does not imply a correlative presumption of fault (see 2.3.2), which must be proved in any case within the corresponding process or procedure.

2.3.7. *Cooperation of several subjects in the same delict.* It is possible that, in addition to the principal perpetrator, other persons also participate in various forms and to varying degrees in the commission of a delict. Their involvement and the subsequent criminal consequences must be tried as resulting from the same prosecutions carried out to establish the penal situation of the principal perpetrator of a possible delict (see 6-8).

- Although it is a doctrinal distinction not necessarily employed by the CIC in a strict sense, co-perpetrators refer to those who conspire together and jointly carry out the same criminal action; while accomplices are understood as those who, through other forms of cooperation such as

commanding, inducing or instigating, make the commission of the delict possible (if the crime could not have been committed *without such cooperation*), simply facilitate it (*covert cooperation*), or hide it, etc.

- The principle stated in this respect in the CIC is that all who cooperate in the commission of the delict with the same intention to commit a violation (although not for the same reasons) are also imputable or responsible for the same delict. Consequently, these co-perpetrators shall be subject to the penalties provided for by the law or penal precept, if they are expressly named in a law or precept; and if only the principal perpetrator is expressly named, to the same penalties provided for him, or to others of the same or lesser gravity according to the type and degree of his participation (cf. 1329 §1).
- In the case of penalties *latae sententiae* (see 3.1.1), if the co-perpetrators and necessary cooperators cannot receive the same penalty as the principal perpetrator (e.g. because they are laypersons and the prescribed penalty only affects clerics, etc.), they can be punished with other penalties *ferendae sententiae* (cf. 1329 §2).

2.4. *Typification: penal law and the penal precept.* Properly speaking, one can only speak of a delict when the offense committed is classified as such and is punishable by a juridical norm (cf. c 1321 §2), which may be a penal law, universal or particular (c. 1315), or a penal precept (c. 1319).

2.4.1. *Penal law.* According to c. 1315 §1, a person who has legislative power can issue penal laws, namely, laws that establish a penalty for a behavior that becomes delictual - becoming object of juridical definition as a delict - from that moment.

- Those with this power to issue penal laws within the limits of their competence: the Roman Pontiff and the Ecumenical Council united with its Head; the diocesan Bishop and his equivalents or assimilated in law; the particular Council; and the person who has received from the Supreme Legislator a delegation of the legislative power (cf. 135 §2).

- Both universal law and particular law (cf. cc 7-22) can establish penal behaviors *ex novo*; and also protect by a penalty what is already commanded or prohibited by divine law. Particular penal law (cf. 1315 §3) may also establish the same, within the limits of its competence (always taking into account the criteria of cc. 1316-1318):

- Reinforce with a penalty the mandate or prohibition established by a universal law.
- Add penalties to those already established for a delict typified by universal law (although this should not be done without very grave necessity).
- Determine or establish as mandatory a penalty that the universal law has left indeterminate (see c. 1315 §2) or has established as optional (see 3.1.2) or may, however, establish the penalty of dismissal from the clerical state, which is reserved to the assumptions determined by the Universal Legislator (c.1317).

2.4.2. *Penal precept.* Unlike penal law, which comes from legislative power, penal precept comes from executive power (including cases in which the authority that issues it is also a legislator: e.g., a diocesan bishop).

- Canon 1319, with an indirect expression, attributes the competence to issue a penal precept to anyone who can issue precepts in the external forum, in virtue of his power of jurisdiction: that is to say, to the executive authority who, according to the law, has the power and competence to impose upon a person or certain persons, for a particular case, the obligation to do or omit something, whether or not mandated by a prior law (cf. c. 49). That provision shall be penal if, at the same time when imposing or requiring the obligation in question, it also orders (i.e., threatens) with a penalty, always determinate (see 3.1.2), in the case of non-compliance.

2.4.2.1. *Distinction between penal precept and penal decree.* In the current system of canon law, in practice, the penal precept is always singular (cf. especially cc. 35-39; 48-58). However, it should not be confused with the so-called penal decree, since these concern two acts that refer to different and non-interchangeable stages of penal proceedings.

- In fact, the penal decree (cf. cc. 1342, 1353) is the extrajudicial decree that imposes a penalty, at the conclusion of the proceeding indicated in c. 1720 (the administrative route for the imposition of penalties: see 7). It is also, as in the case of the penal precept, a singular administrative decree (given by virtue of the executive power); but if the penal precept has, one might say, a function analogous to penal law, the function of the penal decree is analogous to that of the penal sentence.

- So, the penal precept establishes or provides (constitutes) the penalty (as a means to strengthen the mandate it imposes); and the penal decree imposes or declares it (once it is proven that there has been a violation of a law or proper precept that established the penalty).

2.4.2.2. *Example of the various moments of the action of the authority.* If a faithful is having a behavior that damages the life of the Church, or breaching an obligation already imposed by the law, the competent authority, after weighing the question (see cc. 1319 §2 and 1317), may require by means of precept that the person does or fulfills something within a specified period, warning him that, if he does not do so, he will incur the penalty established in the same precept (that was not previously foreseen in general by the law, for if it were, the precept would not be properly *penal*: the delict and the corresponding penalty then would not be established by the precept, but by the previous penal law, which the precept would be limited to *urging*).

- If the indicated period elapses without fulfillment, the offender commits the delict established by the precept and is subject to the penalty established.

- The authority must proceed correctly to impose that penalty, which is not generally “automatic” (i.e., not already imposed by the mere act of disobeying the precept). Normally, the procedure for the imposition of administrative penalties must be followed (cf. c.1720, see 7), abbreviating or omitting all those steps that may be unnecessary redundant, depending on the nature of the case and taking into account the juridical procedures already carried out. In any case, the right of defense of the offender must be carefully guaranteed. The procedure will conclude with a new decree issued under c. 1720 §2 which imposes the penalty.

- The offender would only incur the penalty “automatically”, thus rendering the procedure for its imposition unnecessary, when the penal provision had provided for a *latae sententiae* penalty (see 3.1.1), something which should not be done unless it has to do with grave delicts (see 2.3.2) that are especially scandalous and difficult (cf. c. 1319 §2 and 1318). If this were the case, canonical doctrine already considered at the time of the 1917 Code that the precept itself would be equivalent to the previous warning which is necessary to validly impose a censure (cf. c. 1347) for that which the offender was legitimately threatened with a *latae sententiae* censor by precept and which would be subject to the penalty from the moment when the non-compliance occurred (see 3.1; 3.2).

2.4.2.3. *Scope and juridical limitations of the penal precept.* According to current law, the penal precept:

- Cannot *impose* or *apply* any penalty for past actions, but only *threaten* with it, that is, to establish in a singular case that a certain *future* violation will be punished with a penalty.

- Cannot perform normative functions of a general and abstract nature permitted by c. 1315 §3 to particular penal law.

- Cannot establish the penalty of dismissal from the clerical state that c. 1317 reserves to universal law (see 3.2.2.4).
- Cannot established perpetual expiatory punishments (cf. 1319 §1; 1314 §1, 2°, see 3.2).
- Cannot establish indeterminate penalties (cf. cc 1319 §1; 1315 § 2; see 3.1.2).
- Can establish censures (c. 1312 § 1, 1°), both *ferendae sententiae* and *latae sententiae* (cf. cc 1319 §2 and 1318; 1314; see 3.1), but this should not be done if it is not for the most serious delicts and conforming to c. 1318.
- Can established *expiatory* punishments (see 3.2) also *latae sententiae* for delicts with the characteristics described by c. 1318.

3. TYPES OF PENALTIES PROVIDED FOR BY THE *CIC*

3.1. *Previous distinctions.* In the norms on penalties, the *CIC* refers, explicitly or implicitly, to certain concepts and distinctions, some already mentioned, that need to be understood in order to interpret and apply these provisions correctly.

3.1.1. Penalties “*ferendae sententiae*” and “*latae sententiae*”

- According to c. 1314, the penalty for a delict is usually *ferendae sententiae*; that is to say, when the delict established by a law or by a precept is committed; a penal process must be initiated to impose the penalty by means of a judicial decision (cf. cc. 1721 ss.), or the administrative procedure (cf. c.1720) in order to impose it by means of a penal decree (see 2.4.2.1;
- However, in very serious cases and always expressly (cf. 1314; 1318), the law or the precept establishing it (see 2.4) may provide that the penalty be *latae sententiae*. In these cases the law itself applies the penalty *ipso facto* - without the need for impose it through a decision, because it is already given (*lata*) by the norm - as soon as the violation occurs, always with the other requirements established by the law (cf. 1321; 1324 §3).

3.1.2. *Indeterminate penalties and facultative penalties:*

- A penalty is called indeterminate (cf. c 1315 §2) when the penal law, in establishing a delict, establishes (using the formula “*iusta poena puniatur*”, or similar ones) that such conduct will be punished, but does not specify - or does so only to a certain extent, i.e., saying what kind of penalty would be appropriate. Therefore, if the particular law has not previously determined (in general) a penalty that the universal law establishes as indeterminate (cf. c. 1315 §3), the judge or superior must determine it in the sentence or decree by which the penalty is imposed for that delict (always following the indications of the norm that establishes it and the general norms of the *CIC*).
- The penal precept, as indicated above, cannot threaten with an indeterminate penalty (cf. c.1919 §1).
- A penalty is *facultative* (cf. c 1315 §3), if the law that establishes the delict does not use a *preceptive* but discretionary expression (i.e. “*puniri potest*”, instead of “*puniatur*” or “*puniri debet*”, etc.) which gives the competent authority the power to decide, by law, whether or not to impose the penalty after a prudent assessment of the circumstances of the case.

3.2. *Censures and expiatory penalties.* The penalties provided for by canon law belong to one of these two types (cf. c 1312 §1).

- *Censures* are also called medicinal penalties, because they tend in a peculiar way to the offender's amendment (not excluding, of course, the other purposes of the penalty: see 1.2), which is clearly manifested in its structure and in its juridical regimen.

- *Expiatory penalties*, on the other hand, are not necessarily less grave, nor do they fail to pursue all the general purposes of canonical penal law, but do not have the structural bond with the offender's amendment that characterizes the censures.

3.2.1. *Censures in general*. The censures are: *suspension* (which can be imposed only clerics), *interdict* and *excommunication*. These penalties have some common characteristics:

- They can only be imposed on contumacious offenders (those who persist in their attitude and reject the means that are provided to obtain their amendment).

- As a consequence of the above, the imposition of a censure is invalid if the offender has not been previously admonished at least once to cease his contumacy, giving him a reasonable time to amend (cf. 1347 §1). This warning beforehand is not necessary in the case of a *latae sententiae* censure (see 3.1.1), nor when the censure has been threatened by a penal precept (see 2.4.2).

- The assumption of this warning is different from that foreseen in c. 1339 §1 where there is a warning, as a *penal remedy* (see 3.2.3), to a person who is in the proximate occasion of committing a delict or to one who is suspected of having committed a delict; here the warning is given to those who have *already and certainly committed the delict*, to try to make him repent and rectify without the need to impose the censure and, at the same time, as a prerequisite for validly imposing it if necessary. However, the indications of canon 1339 §§ 1 and 3 on how to make the warning and to formally record it serve as useful guidance.

- Censures cannot be *perpetual*, the offender has the right to be absolved (in a juridical sense) when he abandons the contumacy (cf. cc 1358 §1; 1347 §2).

Censures *latae sententiae* are not exactly automatic, since it is required, as always, that the corresponding delicts are gravely imputable, an extreme that the law reinforces with specific requirements (see 2.3.4). For that reason, although it is possible to state abstractly that whoever commits such a violation incurs such a censure *latae sententiae* instead of stating whether a particular offender has actually incurred the penalty, many times it is necessary to be able to state it officially, e.g., in order to repair the scandal caused by public or notorious conduct. In these cases, it is necessary to verify what is really the penal situation of the person and to *declare* it, after a judicial process or an administrative procedure. The same steps as for the imposition of the penalties *ferendae sententiae* should be fundamentally followed (cf. c 1341, see 7).

- The juridical act of declaration (sentence or decree) does not impose the penalty *latae sententiae* which, as we have seen, would already be imposed by law, if applicable: it has only declarative effects. However, the fact that a censure is declared or not has significant juridical consequences with respect to the effects (cf. cc. 1331 §2; 1332 §3), the obligatory nature of the penalty (cf. cc. 1335 and 1352 §2) and its remission (cf. cc. 1355-1357).

3.2.1.1. *Excommunication*. This is the gravest censure. The offender incurring excommunication is affected by extensive prohibitions in essential aspects of full ecclesiastical communion: he cannot celebrate sacraments or sacramental; cannot receive the sacraments; cannot actively participate in worship celebrations; cannot perform offices, ministries or ecclesiastical duties, and cannot lawfully perform acts involving the power of jurisdiction (cf. c.1331 §1).

- If the excommunication is imposed or declared (see 3.2.1), by a sentence or penal decree, the prohibitions provided for in c. 1331 §2, which are not given in cases of non-declared excommunication *latae sententiae*, are also added to these general effects.

3.2.1.2. *Interdict*. Although this censure does not directly affect the juridical communion of the offender with the Church, nor does it prevent him from exercising other functions, it bears the same

prohibitions as excommunication (cf. c. 1332 §1) regarding the sacraments (celebration and reception, sacramentals and acts of worship (with the same effect also if it is declared: cf. c. 1332 §4), unless the law or the penal precept determines some of its effects otherwise (see c. 1332 §2).

- It seems technically difficult to impose penalties, with the requirements of canon law, to a juridical person (cf. c. 115), including that of interdict, because, as a collective or patrimonial subject, it cannot properly commit a crime, since, for example, it would be impossible to evaluate unitarily the necessary requirements of imputability (see 2.3) and contumacy (see 3.2.1), etc. Outside the strictly penal sphere, there are other possible actions in the exercise of the duty of vigilance of the competent authority on the life and activity of juridical persons: cf. cc. 120, 305, 318, 320, 326, etc.

- On the other hand, individuals may incur a penalty for activities directly related to juridical persons (cf. c. 1332 §4), above all for penal actions carried out as part of their governing bodies or representatives. It could also be penal to belong or register in a particular association (apart from the general assumption provided by c. 1374), for example, after the competent Ordinary had given a legitimate penal precept to prohibit it for grave causes.

3.2.1.3. *Suspension*. This censure, which affects only clerics, prohibits either all or some acts, within certain limits (cf. c. 1333 §3) of the power of orders, the power of governance (including the penalty of invalidity of the act, if the law or the precept establish as such) (cf. c. 1333 §2) or the rights and functions proper to one's office (cf. c. 1333 §1), such as the receiving of certain goods (cf. c. 1333 §4).

- The law or precept can determine the scope of the suspension for specific delicts, under c. 1334.

- Only universal or particular law - not precept - can establish a penalty of suspension *latae sententiae* without determining its extent (within the limits provided by c. 1333). In that case, it will be understood that the effects of the suspension are all those indicated in c. 1333 §1 (cf. c. 1334).

- Where that *latae sententiae* suspension is established, instead, by penal precept (cf. c. 1334 §1), its extent must always be determined (it could cover everything provided for in c. 1333 §1, but must be explicitly determined (cf. c. 1334 §2) and cannot be established with a generic expression, as the law.

- The sentence or the penal decree may also determine the extent of the suspension *ferendae sententiae* in applying it (cf. c. 1334 §1).

3.2.2. *Expiatory penalties*. These consist in the privation of some spiritual or temporal good legitimately imposed on a faithful (in the form of obligation, prohibition, deprivation, disqualification, expulsion, etc.), always in a manner consistent with the supernatural end of the Church (cf. c. 1312 §2).

- They can only affect goods (cf. c. 1338 §1) - faculties, rights, powers, abilities, etc. - that are subject to the power of the authority who establishes the penalty (i.e., the one that *foresees* it, which may not be the same as the one who *imposes* it).

- Unlike censures, expiatory penalties can be *perpetual* or imposed *for a time*, determined or indeterminate (cf. c. 1336 §1).

- The *CIC* offers a list of possible expiatory penalties, among others that could be established (cf. c. 1312 §2).

- Only the prohibitions mentioned in c. 1336 §1, 3° may be *latae sententiae* (cf. c. 1336 §2), not the other expiatory penalties.

3.2.3. *The expiatory penalty of dismissal from the clerical state*. The *dimissio e statu clericali* (cf. c. 290,2°) is always, by its very nature, a *perpetual expiatory penalty*. As has already been pointed out, it cannot be instituted by particular law or by precept (cf. c. 1317). The reservation to universal law (nor can it be chosen, at the moment of imposition of the penalty, in cases in which the law establishes an *indeterminate* penalty for a delict: see 3.1.2 and 8.4.3).

- The legislator does not establish the obligation to impose this penalty as the first and only possibility for any of the delicts established in the *CIC*. On the contrary, he always constitutes it as the upper end of a scale that gradually increases the penal action, allowing it to reach the *dimissio* in the most serious cases. The canons that cover foreseen cases use expressions such as: "*non exclusa dimissione e statu clericali*", "*puniri potest dimissione e statu clericali*", "*in casibus gravioribus dimittatur e statu clericali*", "*gradatim privationibus ac vel etiam dimissione e statu clericali puniri debet*", "*aliae poenae gradatim addi possunt adque ad dimissionem et statu clericali*" (cf. cc. 1364 §2, 1370 §1, 1394 §1, 1395 §§1-3).

- This way of legislating, which is logical, given the nature of the penalty, requires both prudence and strength at the moment of assessing the circumstances of the specific case to impose it.

3.3. *Penal remedies and penances.* In addition to penal sanctions, c. 1312 §3 provides for the use of penal remedies (warning, rebuke), above all to prevent delicts; and penances, to increase a penalty or to replace it in certain cases. The decision to apply a penal remedy or a penance must be adopted by decree (cf. § 1342 §1).

3.3.1. *Penal remedies in general.* The warning (cf. c. 1339 §1) and the rebuke (cf. c. 1339 §2) are the competence of the Ordinary, who can designate another person to carry them out.

- The warning as well as the rebuke in question here, in addition to measures of pastoral solicitude, are *formal* acts which can acquire juridical relevance in different cases and for this reason must always be documented (cf. c. 1339 §3), without necessarily having to be public. The formal character distinguishes these two penal remedies from other admonitions or indications that the Ordinary could do to the faithful, clerics or not, about his conduct in any matter, without any special record of them. In addition, penal remedies always refer to situations more or less close to delictual behavior.

- The *CIC* does not specify the procedure to be followed to satisfy the requirement that there be some documentary evidence of these penal remedies; thus there can be several possibilities.

- For example, the Ordinary, or the person designated by him, may summon the person concerned and give him the text of the warning or rebuke to be read in his presence. Once it is read and the necessary terms are clarified, they both must sign it, indicating the date. If it is anticipated that this procedure may present difficulties (e.g. because the person refuses to sign), or if it is to be done orally, an action of some notary would be necessary, in addition to the Ordinary or the person designated by him, to lend faith to what was acted upon. The document should be kept in the secret archive of the curia (cf. c. 489).

3.3.1.1. *The warning.* This is indicated, firstly, as a preventive measure in cases where someone is in a proximate occasion of committing a delict (cf. c. 1339 §1).

- The Ordinary must assess prudently (with criteria analogous to employed in morality) if a behavior can be qualified as a proximate occasion of committing a delict. It is not necessary, however, to carry out a special investigation for it, since this does not involve a penalty: it would be sufficient to have the prudent provision that a particular conduct, if not rectified, could end up leading to some delict, i.e.; against the faith, or against specific obligations of an office. In fact, the effectiveness of this remedy will depend on whether it is used on time and with diligence when there is reasonable cause, without risking that the delict was committed for fear of making a mistake or for a disproportionate anxiety of certainty.

- Canon 1339 §1 provides that warning may also be used in other cases where, once the preliminary investigation of a possible delict has concluded (cf. c. 1717, see 6), the Ordinary, according to c. 1718 §1, 1°, considers that it is not possible to go ahead with a process or an administrative proceeding for the imposition of the penalty (i.e., because he anticipates that it would not be possible to prove the delict and the accused would have to be acquitted), but nevertheless has the *serious suspicion* that the investigated

may have committed a delict. In these cases, the formal warning has the function of stopping a possible delictual conduct, or avoiding that it happen again.

3.3.1.2. *The rebuke.* Canon 1339 §2 provides rebuke or correction for cases in which the conduct of someone causes scandal or serious disturbance of order.

- Since the correction must be appropriate to the characteristics of the person and of the fact, when an external conduct is involved which, without being delictual, causes scandal, the Ordinary must consider if it is opportune to counteract with giving a proportionate publicity to the fact of correction or even to its content or any of its terms, in addition to leaving the documentary acts as indicated (see 3.3.1).

- Nothing prevents that both correction and warning be employed - even in the same act, but always distinguishing these two penal remedies in the document in which they are communicated, since the same conduct of a person may include aspects that have already passed that necessitated the first as well as other future or ignored aspects (the proximate occasion of committing a delict if not rectified, or the above-described suspicion: see 3.3.1.1) that appropriately necessitate the second according to law.

3.3.2. *Possible use of a penal precept as a penal remedy.* If the warning and corrections made to someone, even repeatedly, have been ineffective and it is foreseeable that they will continue being so, the Ordinary could issue a penal precept (see 2.4.2), in which he should stipulate in detail what the person concerned has to do or avoid doing, and establishes at the same time the penalty that he will incur in case of disobedience.

If any of the behaviors to be avoided or corrected are already typified as a delict under the law, the penal precept shall be limited to spell out the provision in that respect (determining, if it is the case, the penalty undetermined by the law). On the other hand, for other scandalous behaviors, or those that may constitute a proximate occasion of committing a delict, etc., but not previously classified as a delict, the penal precept may establish penalties, always determined (see 3.1.2). The same precept can refer to various behaviors, recalling for some the penal consequences already provided for by the law and establishing for others the consequences that may be incurred upon the interested party if he does not obey the precept concerning them.

3.3.3. *Penances.* According to canon 1340 §1, these consist of a mandate to perform some work of charity, piety or religion (e.g., alms, a time of retreat, a certain reading, a few prayers, etc.).

- They can be imposed in the external forum (that is to say, on the margin of the sacrament of penance as an internal sacramental forum, and of the other cases involving the non-public exercise of the power of governance (cf. c. 130), unless they are for occult transgressions (cf. c. 1340 §2) that are neither public nor notorious.

- For occult transgressions, penances can only be imposed in the internal (sacramental or not), since otherwise it would run the risk of defaming the person concerned (this does not mean that the acts required to be performed must be *internal* or hidden, but the imposition of penance - that is, the reason why the subject is going to perform these acts - is not done with the publicity that acts of authority usually have, according to the nature of each one).

- Penances can be added to penal remedies, according to canon 1340 §3.

- They can be used to substitute a penalty in cases provided by the law, when, that penalty is considered unnecessary or disproportionate due to the circumstances involved and the dispositions of the offender (cf. cc. 1343, 1344, 2°, 1348).

- In some cases, they may be added to a penalty (cf. c. 1312 §3), i.e., with the intention of strengthening its effectiveness to seek the amendment of the offender, or also to aggravate it when, taking into account the circumstances, the penalty provided by the law is in some way insufficient or less effective.

- Lastly, they can be imposed upon remitting a censure (cf. c. 1358).

4. MAIN DELICTS TYPIFIED IN CANON LAW

4.1. *Goods protected by penal law.* The delicts that canon law typifies, while envisaging the penalties for each of them, are grouped around certain ecclesial values that the legislator wants to protect especially, because they are of great importance for the existence and mission of the Church. Specifically, those that the *CIC* typifies in cc. 1364 ss. focus on the three areas in which communion is juridically expressed (cf. c. 205) and on some fundamental aspects of human and Christian dignity. The so-called *delicta graviora*, which include the most serious delicts against the faith and committed against morality or in the celebration of the sacraments, are reserved for the Congregation for the Doctrine of the Faith and are typified in part by the *CIC* and in part by the *Motu proprio Sacramentorum Sanctitatis Tutela* [*SST*], to which it shall be referred when appropriate. - This guide simply lists, by way of a list, the main delicts identified, indicating which are reserved to the Holy See and in what aspect, since what is reserved is, on the one hand, the competence to know judicially or administratively how to punish the delict (or declare it, if it is punished with a penalty *latae sententiae*: see 3.2.1); and on the other hand, the competence to remit or lift the sentence already imposed according to law ("reserved censures", cf. c. 1354 §3). - For the detailed discernment of the specific assumptions - the delictual types, as will be said, are subject to strict interpretation and cannot be extended by analogy: see 7.1 -, and will reference the most common commentaries on the corresponding canons and the manuals cited in the brief bibliography included at the end of this guide.

4.2. Delicts established in the *CIC* and in the *SST*. To structure the list minimally, the categories with which the *CIC* groups the delicts will be used, adding in each group, if applicable, the delicts or specialties that the *SST* adds.

4.2.1. *Delicts against religion and the unity of the Church:*

- Apostasy, heresy and schism (cf. cc. 756 and 1364, *SST*, article 2).
- Forbidden *communicatio in sacris* (cf. cc. 844 and 1365). Conviction of the delict of concelebrating with ministers of ecclesial communities who do not have the apostolic succession or recognize the sacramentality of the priesthood is reserved to the CDF (see *SST*, article 3 § 1, 4).
- Allowing children to be baptized or educated in a non-Catholic religion (cf. c. 1666).
- Profanation of consecrated species, consisting of throwing them to the ground deliberately and with grave contempt or taking them or holding them for a sacrilegious purpose (cf. c. 1367). The knowledge of these delicts is reserved to the CDF (see *SST*, article 3 § 1, 1). The *M.p.* also typifies the delict of consecrating a species or both outside the Mass with a sacrilegious purpose (cf. *SST*, article 3 § 2). The declaration and the remission of the corresponding censure of excommunication *latae sententiae* are reserved to the Apostolic See.
- Perjury before the ecclesiastical authority (cf. c. 1368).
- Using a show, a public meeting or a means of communication to blaspheme, to seriously attack good morals, to insult religion or the Church, or to arouse hatred or contempt against them (cf. c. 1369).

4.2.2. *Delicts against ecclesiastical authorities and against the freedom of the Church:*

- Attack against the Roman Pontiff. Remission of the censure of excommunication *latae sententiae* is reserved to the Apostolic See (cf. c. 1370 § 1).
- Attack against a Bishop (cf. c. 1370 § 2). "Physical violence against a cleric or against a religious or a religious, in contempt of faith, of the Church, of ecclesiastical power or of the ministry" (cf. c. 1370 § 3).

- Stubborn teaching of a doctrine condemned by the Roman Pontiff or by an Ecumenical Council (cf. c. 1371, 1°).

- Obstinate rejection of a doctrine definitively proposed by the Roman Pontiff or by the College of Bishops on faith and customs, without retracting after having been admonished by the Apostolic See or by the Ordinary (cf. c. 1371, 1°).

- Disobedience to the legitimate mandate or prohibition of the Apostolic See, of the Ordinary or of the Superior, which persists after the subject has been admonished (cf. c. 1371, 2°).

- Making recourse to the Ecumenical Council or to the College of Bishops against an act of the Roman Pontiff (cf. c. 1372).

- Publicly inciting among subjects animosities or hatred against the Apostolic See or an Ordinary because of some act of power or ecclesiastical ministry, or provoking disobedience against them (cf. c. 1373).

- Joining an association that works against the Church (cf. c. 1374).

- Promotion or direction of an association that works against the Church (cf. c. 1374).

- Impeding the free exercise of the ministry, of an election or of ecclesiastical power (cf. c. 1375).

- Impeding the legitimate use of ecclesiastical goods (cf. c. 1375).

- Intimidating an elector, one elected, or one who exercise ecclesiastical power or ministry (cf. c. 1375).

- Profanation of a sacred object, movable or immovable (cf. cc. 1171 & 1376).

- Alienating ecclesiastical goods without the permission prescribed by the law (cf. cc. 1257, 1291 ss and 1377).

4.2.3. *Usurpation of ecclesiastical functions and delicts in its exercise:*

- Attempting the celebration of the Eucharist without being a priest. Conviction of this delict is reserved to the CDF (cf. c. 1378 §2, 1°; *SST*, art. 3 §1, 2°).

- Simulation of the Eucharistic celebration. Conviction of this delict is reserved to the CDF (cf. c. 1379; *SST*, art. 3 §1, 3°).

- Absolving an accomplice in the sin against the sixth commandment. Conviction of this delict is reserved to the CDF; and the remission of the censure of excommunication *latae sententiae* is reserved to the Apostolic See (cf. c. 1378 §1; *SST*, art. 4 §1).

- Attempting to give sacramental absolution or simply listening to a sacramental confession without being to celebrate it validly. Conviction of this delict is reserved to the CDF (cf. c. 1378 §2, 2°; *SST*, art. 4 §1, 2°).

- Simulation of the sacramental absolution. Conviction of this delict is reserved to the CDF (cf. c. 1379; *SST*, art. 4 §1, 3°).

- Solicitation of a confessor to a penitent during the confession, on the occasion, or under the pretext of it to solicit him or her to commit a sin against the sixth commandment (cf. c. 1387). If the solicitation is to commit a sin with the confessor himself, the conviction of the delict is reserved to the CDF (cf. *SST*, art. 4 §1, 4°).

- Direct or indirect violation of the sacramental seal by the confessor (cf. c. 1388 §1). Conviction of both of these delicts is reserved to the CDF; the penalty of the first is the censure of excommunication *latae sententiae* reserved to the Apostolic See (cf. *SST*, art. 4 §1, 5°).

- Violation of the secret of the confession by the interpreter and by those who, in some other way, have knowledge of the sins from the confession (cf. c. 1388 §2).

- Recording by some technical means or revealing with malice, through the means of communication, the words of the confessor or of the penitent, whether a true or feigned confession, of oneself or of another person. Conviction of this delict is reserved to the CDF (cf. c. 1388; *SST*, art. 4 §2).

- Simulation of the administration of a sacrament of another mean not specifically typified (cf. c. 1379).
- Celebration or reception of a sacrament with simony (cf. c. 1380).
- Usurpation of an ecclesiastical office or illegitimate retention of the office after its privation or cessation (cf. c. 1381).
- Episcopal consecration (active or passive) without papal mandate. Remission of the censure excommunication *latae sententiae* incurred by this delict is reserved to the Apostolic See (cf. c. 1382).
- Ordaining without legitimate dimissorial letters someone who is not his subject, and receiving the ordination in these circumstances (cf. cc. 1015 & 1383).
- Attempting to ordain a woman. Conviction of this delict is reserved to the CDF. Remission of the censure of excommunication *latae sententiae* incurred by those who commit it is also reserved to the Apostolic See (cf. *SST*, art. 5).
- Illegitimate exercise of a priestly function or of another sacred ministry, by some mean not specifically typified (cf. c. 1384).
- Illegitimately making a profit with the stipends of the Mass (cf. c. 1385).
- Bribery of those who exercise a function in the Church, with promises or offerings, so that he will do or omit something illegitimately (cf. c. 1386).
- Accepting the indicated bribes in the first place (cf. c. 1386).
- Abuse of an ecclesiastical power or function (cf. c. 1389 §1).