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Vademecum on certain points of procedure for treating cases of sexual abuse of minors committed by clerics, compiled by the Congregation for the Doctrine of the Faith

CONGREGATION FOR THE DOCTRINE OF THE FAITH

VADEMECUM

ON CERTAIN POINTS OF PROCEDURE

IN TREATING CASES OF SEXUAL ABUSE OF MINORS

COMMITTED BY CLERICS

NOTA BENE:

a. In addition to the delicts listed in art. 6 of the *Normae* promulgated by the Motu Proprio *Sacramentorum Sanctitatis Tutela*, what follows is to be observed – with eventual adaptations – in all cases involving delicts reserved to the Congregation for the Doctrine of the Faith;

b. The following abbreviations will be used: CIC: *Codex Iuris Canonici*; CCEO: *Codex Canonum Ecclesiarum Orientalium*; SST: Motu Proprio *Sacramentorum Sanctitatis Tutela* – 2010 Revised Norms; VELM: Motu Proprio *Vos Estis Lux Mundi* – 2019; CDF: *Congregatio pro Doctrina Fidei*.

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Introduction

In response to numerous questions about the procedures to be followed in those penal cases for which it is competent, the Congregation for the Doctrine of the Faith has prepared this *Vademecum*, intended primarily for Ordinaries and other personnel needing to apply the canonical norms governing cases of the sexual abuse of

minors by clerics.

The present manual is meant to serve as a handbook for those charged with ascertaining the truth in such criminal cases, leading them step-by-step from the *notitia criminis* to the definitive conclusion of the case.

While not issuing new norms or altering current canonical legislation, this manual seeks to clarify the various stages of the procedures involved. Its use is to be encouraged, since a standardized praxis will contribute to a better administration of justice.

Reference is made above all to the two Codes presently in force (CIC and CCEO); the *Norms on Delicts Reserved to the Congregation for the Doctrine of the Faith* in the revised 2010 version, issued with the Motu Proprio *Sacramentorum Sanctitatis Tutela*, taking account of the revisions introduced by the *Rescripta ex Audientia* of 3 and 6 December 2019; the Motu Proprio *Vos Estis Lux Mundi*; and, not least, the praxis of the Congregation for the Doctrine of the Faith, which has in recent years become increasingly clear and consolidated.

Intended to be flexible, this manual can be periodically updated if the norms to which it refers are modified, or if the praxis of the Congregation calls for further clarifications and revisions.

A choice was made not to include in this *Vademecum* guidelines for carrying out the judicial penal process in the first grade of judgment, since it was felt that the procedure set forth in the present Codes is sufficiently clear and detailed.

It is hoped that this handbook will assist Dioceses, Institutes of Consecrated Life and Societies of Apostolic Life, Episcopal Conferences and the various ecclesiastical circumscriptions to better understand and implement the requirements of justice regarding a *delictum gravius* that constitutes for the whole Church a profound and painful wound that cries out for healing.

I. What constitutes the delict?

1. The delict in question includes every external offense against the sixth commandment of the Decalogue committed by a cleric with a minor (cf. canon 1395 § 2 CIC; art. 6 § 1, 1º SST).

2. The typology of the delict is quite broad; it can include, for example, sexual relations (consensual or non-consensual), physical contact for sexual gratification, exhibitionism, masturbation, the production of pornography, inducement to prostitution, conversations and/or propositions of a sexual nature, which can also occur through various means of communication.

3. The concept of “minor” in these cases has varied over the course of time. Prior to 30 April 2001, a minor was defined as a person under 16 years of age (even though in some particular legislations – for example in the United States [from 1994] and Ireland [from 1996] – the age had already been raised to 18). After 30 April 2001, with the promulgation of the Motu Proprio *Sacramentorum Sanctitatis Tutela*, the age was universally raised to 18 years, and this is the age currently in effect. These variations must be taken into account when determining whether the “minor” in question was in fact such, according to the legal definition in effect at the time of the facts.

4. The use of the term “minor” does not reflect the distinction occasionally proposed by the psychological sciences between acts of “paedophilia” and those of “ephebophilia”, that is, involving post-pubescent adolescents. Their degree of sexual maturity does not affect the canonical definition of the delict.

5. The revision of the Motu Proprio SST, promulgated on 21 May 2010, states that a person who habitually has the imperfect use of reason is to be considered equivalent to a minor (cf. art. 6 § 1, 1º SST). With regard to the use of the term “vulnerable adult”, elsewhere described as “any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally limits their ability to understand or

to want or otherwise resist the offence" (cf. art. 1 § 2, b VELM), it should be noted that this definition includes other situations than those pertaining to the competence of the CDF, which remains limited to minors under eighteen years of age and to those who "habitually have an imperfect use of reason". Other situations outside of these cases are handled by the competent Dicasteries (cf. art. 7 § 1 VELM).

6. SST has also introduced (cf. art. 6 § 1, 2º SST) three new delicts involving minors, i.e., the acquisition, possession (even temporary) or distribution by a cleric of pornographic images of minors under the age of 14 (as of 1 January 2020, under the age of 18) for purposes of sexual gratification by whatever means or using whatever technology. From 1 June to 31 December 2019, the acquisition, possession, or distribution of pornographic material involving minors between 14 and 18 years of age by clerics or by members of Institutes of Consecrated Life or Societies of Apostolic Life are delicts for which other Dicasteries are competent (cf. arts. 1 and 7 VELM). From 1 January 2020, the CDF is competent for these delicts if committed by clerics.

7. It should be noted that these three delicts can be addressed canonically only after the date that SST took effect, namely, 21 May 2010. The production of pornography involving minors, on the other hand, falls under the typology of delict listed in nos. 1-4 of the present *Vademecum*, and therefore is also to be dealt with if it occurred prior to that date.

8. In accordance with the law governing religious who are members of the Latin Church (cf. canons 695ff. CIC), the delict mentioned above in no. 1 can also entail dismissal from a religious Institute. The following should be kept in mind: a/ such dismissal is not a penalty, but rather an administrative act of the supreme Moderator; b/ to issue a decree of dismissal, the relevant procedure described in canons 695 § 2, 699 and 700 CIC must be carefully followed; c/ confirmation of the decree of dismissal demanded by canon 700 CIC must be requested from the CDF; d/ dismissal from the Institute entails the loss of membership in the Institute and the cessation of vows and obligations deriving from profession (cf. canon 701 CIC), as well as the prohibition of exercising any sacred orders received until the conditions referred to in canon 701 CIC are met. The same rules, suitably adapted, are also applicable to definitively incorporated members of Societies of Apostolic Life (cf. canon 746 CIC).

II. What must be done when information is received about a possible delict (*notitia de delicto*)?

a/ *What is meant by the term notitia de delicto?*

9. A *notitia de delicto* (cf. canon 1717 § 1 CIC; canon 1468 § 1 CCEO; art. 16 SST; art. 3 VELM), occasionally called *notitia criminis*, consists of any information about a possible delict that in any way comes to the attention of the Ordinary or Hierarch. It need not be a formal complaint.

10. This *notitia* can come from a variety of sources: it can be formally presented to the Ordinary or Hierarch, orally or in writing, by the alleged victim, his or her guardians or other persons claiming to have knowledge about the matter; it can become known to the Ordinary or Hierarch through the exercise of his duty for vigilance; it can be reported to the Ordinary or Hierarch by the civil authorities through channels provided for by local legislation; it can be made known through the communications media (including social media); it can come to his knowledge through hearsay, or in any other adequate way.

11. At times, a *notitia de delicto* can derive from an anonymous source, namely, from unidentified or unidentifiable persons. The anonymity of the source should not automatically lead to considering the report as false. Nonetheless, for easily understandable reasons, great caution should be exercised in considering this type of *notitia*, and anonymous reports certainly should not be encouraged.

12. Likewise, when a *notitia de delicto* comes from sources whose credibility might appear at first doubtful, it is not advisable to dismiss the matter *a priori*.

13. At times, a *notitia de delicto* lacks specific details (names, dates, times…). Even if vague and unclear, it

should be appropriately assessed and, if reasonably possible, given all due attention.

14. It must be pointed out that a report of a *delictum gravius* received in confession is under placed the strictest bond of the sacramental seal (cf. canon 983 § 1 CIC; canon 733 § 1 CCEO; art. 4 § 1, 5º SST). A confessor who learns of a *delictum gravius* during the celebration of the sacrament should seek to convince the penitent to make that information known by other means, in order to enable the appropriate authorities to take action.

15. The responsibility for vigilance incumbent on the Ordinary or Hierarch does not demand that he constantly monitor the clerics subject to him, yet neither does it allow him to consider himself exempt from keeping informed about their conduct in these areas, especially if he becomes aware of suspicions, scandalous behaviour, or serious misconduct.

b/ What actions should be taken upon receiving a *notitia de delicto*?

16. Art. 16 SST (cf. also canons 1717 CIC and 1468 CCEO) states that, when a *notitia de delicto* is received, a preliminary investigation ought to ensue, provided that the report is *"saltem verisimilis"*. If that plausibility proves unfounded, there is no need to pursue the *notitia de delicto*, although care should be taken to keep the documentation, together with a written explanation regarding the reasons for the decision.

17. Even in cases where there is no explicit legal obligation to do so, the ecclesiastical authorities should make a report to the competent civil authorities if this is considered necessary to protect the person involved or other minors from the danger of further criminal acts.

18. Given the sensitive nature of the matter (for example, the fact that sins against the sixth commandment of the Decalogue rarely occur in the presence of witnesses), a determination that the *notitia* lacks the semblance of truth (which can lead to omitting the preliminary investigation) will be made only in the case of the manifest impossibility of proceeding according to the norms of canon law. For example, if it turns out that at the time of the delict of which he is accused, the person was not yet a cleric; if it comes to light that the presumed victim was not a minor (on this point, cf. no. 3); if it is a well-known fact that the person accused could not have been present at the place of the delict when the alleged actions took place.

19. Even in these cases, however, it is advisable that the Ordinary or Hierarch communicate to the CDF the *notitia de delicto*and the decision made to forego the preliminary investigation due to the manifest lack of the semblance of truth.

20. Here it should be mentioned that in cases of improper and imprudent conduct, even in the absence of a delict involving minors, should it prove necessary to protect the common good and to avoid scandal, the Ordinary or Hierarch is competent to take other administrative provisions with regard to the person accused (for example, restrictions on his ministry), or to impose the penal remedies mentioned in canon 1339 CIC for the purpose of preventing delicts (cf. canon 1312 § 3 CIC) or to give the public reprimand referred to in canon 1427 CCEO. In the case of delicts that are *non graviora*, the Ordinary or Hierarch should employ the juridical means appropriate to the particular circumstances.

21. According to canon 1717 CIC and canon 1468 CCEO, responsibility for the preliminary investigation belongs to the Ordinary or Hierarch who received the *notitia de delicto*, or to a suitable person selected by him. The eventual omission of this duty could constitute a delict subject to a canonical procedure in conformity with the Code of Canon Law and the Motu Proprio *Come una madre amorevole*, as well as art. 1 § 1, b VELM.

22. This task belongs to the Ordinary or Hierarch of the accused cleric or, if different, the Ordinary or Hierarch of the place where the alleged delicts took place. In the latter case, it will naturally be helpful for there to be communication and cooperation between the different Ordinaries involved, in order to avoid conflicts of competence or the duplication of labour, particularly if the cleric is a religious.

23. Should an Ordinary or Hierarch encounter difficulties in initiating or carrying out the preliminary investigation, he should immediately contact the CDF for advice or help in resolving any eventual questions.

24. It can happen that the *notitia de delicto* comes directly to the CDF and not through the Ordinary or Hierarch. In that case, the CDF can ask the latter to carry out the investigations or, in accordance with art. 17 SST, can carry them out itself.

25. The CDF, according to its own judgment, by explicit request or by necessity, can also ask any other Ordinary or Hierarch to carry out the preliminary investigation.

26. The preliminary canonical investigation must be carried out independently of any corresponding investigation by the civil authorities. In those cases where state legislation prohibits investigations parallel to its own, the ecclesiastical authorities should refrain from initiating the preliminary investigation and report the accusation to the CDF, including any useful documentation. In cases where it seems appropriate to await the conclusion of the civil investigations in order to acquire their results, or for other reasons, the Ordinary or Hierarch would do well to seek the advice of the CDF in this regard.

27. The investigation should be carried out with respect for the civil laws of each state (cf. art. 19 VELM).

28. For the delicts considered here, it should be noted that the terms of prescription for the criminal action have varied significantly over time. The terms currently in effect are defined by art. 7 SST.[1] Yet since art. 7 § 1 SST permits the CDF to derogate from prescription in individual cases, an Ordinary or Hierarch who has determined that the times for prescription have elapsed must still respond to the *notitia de delicto* and carry out the eventual preliminary investigation, communicating its results to the CDF, which is competent to decide whether prescription is to be retained or to grant a derogation from it. In forwarding the acts, it would be helpful for the Ordinary or Hierarch to express his personal opinion regarding an eventual derogation, basing it on concrete circumstances (e.g., cleric's health status or age, cleric's ability to exercise right of self-defence, harm caused by the alleged criminal act, scandal given).

29. In these sensitive preliminary acts, the Ordinary or Hierarch can seek the advice of the CDF (as is possible at any time during the handling of a case) and freely consult with experts in canonical penal matters. In the latter case, however, care should be taken to avoid any inappropriate or illicit diffusion of information to the public that could prejudice successive investigations or give the impression that the facts or the guilt of the cleric in question have already been determined with certainty.

30. It should be noted that already in this phase one is bound to observe the secret of office. It must be remembered, however, that an obligation of silence about the allegations cannot be imposed on the one reporting the matter, on a person who claims to have been harmed, and on witnesses.

31. In accordance with art. 2 § 3 VELM, an Ordinary who has received a *notitia de delicto* must transmit it immediately to the Ordinary or Hierarch of the place where the events were said to have occurred, as well as to the proper Ordinary or Hierarch of the person reported, namely, in the case of a religious, to his major Superior, if the latter is his proper Ordinary, and in the case of a diocesan priest, to the Ordinary of the diocese or the eparchial Bishop of incardination. In cases where the local Ordinary or Hierarch and the proper Ordinary or Hierarch are not the same person, it is preferable that they contact each other to determine which of them will carry out the investigation. In cases where the report concerns a member of an Institute of Consecrated Life or a Society of Apostolic Life, the major Superior will also inform the supreme Moderator and, in the case of Institutes and Societies of diocesan right, also the respective Bishop.

III. How does the preliminary investigation take place?

32. The preliminary investigation takes place in accordance with the criteria and procedures set forth in canon 1717 CIC or canon 1468 CCEO and cited below.

a/ What is the preliminary investigation?

33. It must always be kept in mind that the preliminary investigation is not a trial, nor does it seek to attain moral certitude as to whether the alleged events occurred. It serves: a/ to gather data useful for a more detailed examination of the *notitia de delicto*; and b/ to determine the plausibility of the report, that is, to determine that which is called *fumus delicti*, namely the sufficient basis both in law and in fact so as to consider the accusation as having the semblance of truth.

34. For this reason, as the canons cited in no. 32 indicate, the preliminary investigation should gather detailed information about the *notitia de delicto* with regard to facts, circumstances and imputability. It is not necessary at this phase to assemble complete elements of proof (e.g., testimonies, expert opinions), since this would be the task of an eventual subsequent penal procedure. The important thing is to reconstruct, to the extent possible, the facts on which the accusation is based, the number and time of the criminal acts, the circumstances in which they took place and general details about the alleged victims, together with a preliminary evaluation of the eventual physical, psychological and moral harm inflicted. Care should also be taken care to determine any possible relation to the sacramental internal forum (in this regard, however, account must be taken of the prescriptions of art. 24 SST[2]). At this point, any other delicts attributed to the accused (cf. art. 8 § 2 SST[3]) can be added, as well as any indication of problematic facts emerging from his biographical profile. It can be useful to assemble testimonies and documents, of any kind or provenance (including the results of investigations or trials carried out by civil authorities), which may in fact prove helpful for substantiating and validating the plausibility of the accusation. It is likewise possible at this point to indicate eventual exempting, mitigating or aggravating factors, as provided for by law. It could also prove helpful to collect at this time testimonials of credibility with regard to the complainants and the alleged victims. An Appendix to the present *Vademecum* contains a schematic outline of useful data that those carrying out the preliminary investigation will want to compile and have at hand (cf. no. 69).

35. If, in the course of the preliminary investigation, other *notitiae de delicto* become known, these must also be looked into as part of the same investigation.

36. As mentioned above, the acquisition of the results of civil investigations (or of an entire trial before a tribunal of the state) could make the preliminary canonical investigation unnecessary. Due care must be taken, however, by those who must carry out the preliminary investigation to examine the civil investigation, since the criteria used in the latter (with regard, for example, to terms of prescription, the typology of the crime, the age of the victim, etc.) can vary significantly with respect to the norms of canon law. In these situations too, it can be advisable, in case of doubt, to consult with the CDF.

37. The preliminary investigation could also prove unnecessary in the case of a notorious and indisputable crime (given, for example, the acquisition of the civil proceedings or an admission on the part of the cleric).

b/ What juridical acts must be carried out to initiate the preliminary investigation?

38. If the competent Ordinary or Hierarch considers it appropriate to enlist another suitable person to carry out the investigation (cf. no. 21), he is to select him or her using the criteria indicated by canons 1428 §§ 1-2 CIC or 1093 CCEO.[4]

39. In appointing the person who carries out the investigation, and taking into account the cooperation that can be offered by lay persons in accordance with canons 228 CIC and 408 CCEO (cf. art. 13 VELM), the Ordinary or Hierarch should keep in mind that, according to canons 1717 § 3 CIC and 1468 § 3 CCEO, if a penal judicial process is then initiated, that same person cannot act as a judge in the matter. Sound practice suggests that the same criterion be used in appointing the Delegate and the Assessors in the case of an extrajudicial process.

40. In accordance with canons 1719 CIC and 1470 CCEO, the Ordinary or Hierarch is to issue a decree opening the preliminary investigation, in which he names the person conducting the investigation and indicates in the text that he or she enjoys the powers referred to in canon 1717 § 3 CIC or 1468 § 3 CCEO.

41. Although not expressly provided for by law, it is advisable that a priest notary be appointed (cf. canon 483 § 2 CIC and canon 253 § 2 CCEO, where other criteria are indicated for the choice), who assists the person conducting the preliminary investigation, for the purpose of ensuring the authenticity of the acts which have been drawn up (cf. canons 1437 § 2 CIC and 1101 § 2 CCEO).

42. It should be noted, however, that since these are not the acts of a process, the presence of the notary is not necessary for their validity.

43. In the investigative phase the appointment of a promoter of justice is not foreseen.

c/ *What complementary acts can or must be carried out during the preliminary investigation?*

44. Canons 1717 § 2 CIC and 1468 § 2 CCEO, and articles 4 § 2 and 5 § 2 VELM speak of protecting the good name of the persons involved (the accused, alleged victims, witnesses), so that the report will not lead to prejudice, retaliation or discrimination in their regard. The one who carries out the preliminary investigation must therefore be particularly careful to take every possible precaution to this end, since the right to a good name is one of the rights of the faithful upheld by canons 220 CIC and 23 CCEO. It should be noted, however, that those canons protect that right from illegitimate violations. Hence, should the common good be endangered, the release of information about the existence of an accusation does not necessarily constitute a violation of one's good name. Furthermore, the persons involved are to be informed that in the event of a judicial seizure or a subpoena of the acts of the investigation on the part of civil authorities, it will no longer be possible for the Church to guarantee the confidentiality of the depositions and documentation acquired from the canonical investigation.

45. In any event, especially in cases where public statements must be made, great caution should be exercised in providing information about the facts. Statements should be brief and concise, avoiding clamorous announcements, refraining completely from any premature judgment about the guilt or innocence of the person accused (since this is to be established only by an eventual penal process aimed at verifying the basis of the accusation), and respecting any desire for privacy expressed by the alleged victims.

46. Since, as stated above, in this phase the possible guilt of the accused person has yet to be established, all care should be taken to avoid – in public statements or private communication – any affirmation made in the name of the Church, the Institute or Society, or on one's own behalf, that could constitute an anticipation of judgement on the merits of the facts.

47. It should also be noted that accusations, processes and decisions relative to delicts mentioned in art. 6 SST are subject to the secret of office. This does not prevent persons reporting – especially if they also intend to inform the civil authorities – from making public their actions. Furthermore, since not all forms of *notitiae de delicto* are formal accusations, it is possible to evaluate whether or not one is bound by the secret, always keeping in mind the respect for the good name of others referred to in no. 44.

48. Here too, consideration should be given to whether the Ordinary or Hierarch is obliged to inform the civil authorities of the reception of the *notitia de delicto* and the opening of the preliminary investigation. Two principles apply: a/ respect for the laws of the state (cf. art. 19 VELM); and b/ respect for the desire of the alleged victim, provided that this is not contrary to civil legislation. Alleged victims should be encouraged – as will be stated below (no. 56) – to exercise their duties and rights vis-à-vis the state authorities, taking care to document that this encouragement took place and to avoid any form of dissuasion with regard to the alleged victim. Relevant agreements (concordats, accords, protocols of understanding) entered into by the Apostolic See with national governments must always and in any event be observed.

49. When the laws of the state require the Ordinary or Hierarch to report a *notitia de delicto*, he must do so, even if it is expected that on the basis of state laws no action will be taken (for example, in cases where the statute of limitations has expired or the definition of the crime may vary).

50. Whenever civil judicial authorities issue a legitimate executive order requiring the surrender of documents regarding cases, or order the judicial seizure of such documents, the Ordinary or Hierarch must cooperate with the civil authorities. If the legitimacy of such a request or seizure is in doubt, the Ordinary or Hierarch can consult legal experts about available means of recourse. In any case, it is advisable to inform the Papal Representative immediately.

51. In cases where it proves necessary to hear minors or persons equivalent to them, the civil norms of the country should be followed, as well as methods suited to their age or condition, permitting, for example, that the minor be accompanied by a trusted adult and avoiding any direct contact with the person accused.

52. During the investigative process, a particularly sensitive task falling to the Ordinary of Hierarch is to decide if and when to inform the person being accused.

53. In this regard, there is no uniform criterion or explicit provision in law. An assessment must be made of all the goods at stake: in addition to the protection of the good name of the persons involved, consideration must also be given, for example, to the risk of compromising the preliminary investigation or giving scandal to the faithful, and the advantage of collecting beforehand all evidence that could prove useful or necessary.

54. Should a decision be made to question the accused person, since this is a preliminary phase prior to a possible process, it is not obligatory to name an official advocate for him. If he considers it helpful, however, he can be assisted by a patron of his choice. An oath cannot be imposed on the accused person (cf. *ex analogia*, canons 1728 § 2 CIC and 1471 § 2 CCEO).

55. The ecclesiastical authorities must ensure that the alleged victim and his or her family are treated with dignity and respect, and must offer them welcome, attentive hearing and support, also through specific services, as well as spiritual, medical and psychological help, as required by the specific case (cf. art. 5 VELM). The same can be done with regard to the accused. One should, however, avoid giving the impression of wishing to anticipate the results of the process.

56. It is absolutely necessary to avoid in this phase any act that could be interpreted by the alleged victim as an obstacle to the exercise of his or her civil rights vis-à-vis the civil authorities.

57. Where there exist state or ecclesiastical structures of information and support for alleged victims, or of consultation for ecclesial authorities, it is helpful also to refer to them. The purpose of these structures is purely that of advice, guidance and assistance; their analyses do not in any way constitute canonical procedural decisions.

58. To defend the good name of the persons involved and to protect the public good, as well as to avoid other factors (for example, the rise of scandal, the risk of concealment of future evidence, the presence of threats or other conduct meant to dissuade the alleged victim from exercising his or her rights, the protection of other possible victims), in accordance with art. 19 SST, the Ordinary or Hierarch has the right, from the outset of the preliminary investigation, to impose the precautionary measures listed in canons 1722 CIC and 1473 CCEO [5]

59. The precautionary measures found in these canons constitute a taxative list, in other words, only one or more of those delineated can be chosen.

60. This does not prevent the Ordinary or Hierarch from imposing other disciplinary measures within his power, yet these cannot be strictly defined as “precautionary measures”.

d/ How are precautionary measures imposed?

61. First, it should be stated that a precautionary measure is not a penalty (since penalties are imposed only at the end of a penal process), but an administrative act whose purposes are described by the aforementioned

canons 1722 CIC and 1473 CCEO. It should be clearly explained to the party in question that the measure is not penal in nature, lest he think that he has already been convicted and punished from the start. It must also be emphasized that precautionary measures must be revoked if the reason for them ceases and that they themselves cease with the conclusion of the eventual penal process. Furthermore, they can be modified (made more or less severe), if circumstances so demand. Still, particular prudence and discernment is urged in judging whether the reason that suggested them has ceased; nor is it excluded that – once revoked – they can be re-imposed.

62. It has been noted that the older terminology of *suspensio a divinis* is still frequently being used to refer to the prohibition of the exercise of ministry imposed on a cleric as a precautionary measure. It is best to avoid this term, and that of *suspensio ad cautelam*, since in the current legislation suspension is a penalty, and cannot yet be imposed at this stage. The provision would more properly be called, for example, *prohibition* from the exercise of the ministry.

63. A decision to be avoided is that of simply transferring the accused cleric from his office, region or religious house, with the idea that distancing him from the place of the alleged crime or alleged victims constitutes a sufficient solution of the case.

64. The precautionary measures referred to in no. 58 are imposed by a singular precept, legitimately made known (cf. canons 49ff. and 1319 CIC and 1406 and 1510ff. CCEO).

65. It should be noted that whenever a decision is made to modify or revoke precautionary measures, this must be done by a corresponding decree, legitimately made known. This will not be necessary, however, at the conclusion of the possible process, since at that moment those measures cease to have legal effect.

e/ *What must be done to conclude the preliminary investigation?*

66. It is recommended, for the sake of equity and a reasonable exercise of justice, that the duration of the preliminary investigation correspond to the purpose of the investigation, which is to assess the plausibility of the *notitia de delicto* and hence the existence of the *fumus delicti*. An unjustified delay in the preliminary investigation may constitute an act of negligence on the part of ecclesiastical authority.

67. If the investigation has been carried out by a suitable person appointed by the Ordinary or Hierarch, he or she is to consign all the acts of the investigation, together with a personal evaluation of its results.

68. In accordance with canons 1719 CIC and 1470 CCEO, the Ordinary or Hierarch must decree the conclusion of the preliminary investigation.

69. In accordance with art. 16 SST, once the preliminary investigation has concluded, whatever its outcome, the Ordinary or Hierarch is obliged to send, without delay, an authentic copy of the relative acts to the CDF. Together with the copy of the acts and the duly completed form found at the end of this handbook, he is to provide his own evaluation of the results of the investigation (*votum*) and to offer any suggestions he may have on how to proceed (if, for example, he considers it appropriate to initiate a penal procedure and of what kind; if he considers sufficient the penalty imposed by the civil authorities; if the application of administrative measures by the Ordinary or Hierarch is preferable; if the prescription of the delict should be declared or its derogation granted).

70. In cases where the Ordinary or Hierarch who carried out the preliminary investigation is a major Superior, it is best that he likewise transmit a copy of all documentation related to the investigation to the supreme Moderator (or to the relative Bishop in the case of Institutes or Societies of diocesan right), since they are the persons with whom the CDF will ordinarily communicate thereafter. For his part, the supreme Moderator will send to the CDF his own *votum*, as above in no. 69.

71. Whenever the Ordinary who carried out the preliminary investigation is not the Ordinary of the place where the alleged delict was committed, he is to communicate to the latter the results of the investigation.

72. The acts are to be sent in a single copy; it is helpful if they are authenticated by a notary who is a member of the curia, unless a specific notary had been appointed for the preliminary investigation.

73. Canons 1719 CIC and 1470 CCEO state that the original of all the acts is to be kept in the secret archive of the curia.

74. Again, according to art. 16 SST, once the acts of the preliminary investigation have been sent to the CDF, the Ordinary or Hierarch is to await communications or instructions in this regard from the CDF.

75. Clearly, if other elements related to the preliminary investigation or new accusations should emerge in the meantime, these are to be forwarded to the CDF as quickly as possible, in order to be added to what is already in its possession. If it appears useful to reopen the preliminary investigation on the basis of those elements, the CDF is to be informed immediately.

IV. What can the CDF do at this point?

76. Upon receipt of the acts of the preliminary investigation, ordinarily the CDF immediately sends an acknowledgment to the Ordinary, Hierarch, Supreme Moderator (in the case of religious, also to the Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life; if the cleric is from an Eastern Church, to the Congregation for Oriental Churches; and to the Congregation for the Evangelization of Peoples if the cleric belongs to a territory subject to that Dicastery), communicating – unless it had previously done so – the protocol number corresponding to the case. Reference must be made to this number in all further communication with the CDF.

77. After attentively examining the acts, the CDF can then choose to act in a variety of ways: it can archive the case; request a more thorough preliminary investigation; impose non-penal disciplinary measures, ordinarily by a penal precept; impose penal remedies or penances, or warnings or rebukes; initiate a penal process; or identify other means of pastoral response. The decision, once made, is then communicated to the Ordinary with suitable instructions for its execution.

a/ *What are non-penal disciplinary measures?*

78. Non-penal disciplinary measures are singular administrative acts (that is, acts of the Ordinary or Hierarch, or of the CDF) by which the accused is ordered to do or to refrain from doing something. In these cases, limits are ordinarily imposed on the exercise of the ministry, of greater or lesser extent in view of the case, and also at times the obligation of residing in a certain place. It must be emphasized that these are not penalties, but acts of governance meant to ensure and protect the common good and ecclesial discipline, and to avoid scandal on the part of the faithful.

b/ *What is a penal precept?*

79. The ordinary form with which these measures are imposed is the penal precept mentioned in canon 1319 § 1 CIC and 1406 § 1 CCEO. Canon 1406 § 2 CCEO states that a warning containing the threat of penalty is equivalent to a penal precept.

80. The formalities required for a precept are those previously mentioned (canons 49ff. CIC and 1510ff. CCEO). Nonetheless, since it involves a penal precept, the text must clearly indicate the penalty being threatened if the recipient of the precept were to violate the measures imposed on him.

81. It should be kept in mind that, according to canon 1319 § 1 CIC, a penal precept cannot impose perpetual expiatory penalties; furthermore, the penalty must be clearly defined. Other exclusions of penalties are foreseen by canon 1406 § 1 CCEO for Eastern rite faithful.

82. Such an administrative act admits recourse within the terms of law.

c/ *What are penal remedies, penances and public rebukes?*

83. For the definition of penal remedies, penances and public rebukes, canons 1339 and 1340 § 1 CIC and canon 1427 CCEO should be consulted. [6]

V. What decisions are possible in a penal process?

84. The decision that concludes the penal process, whether judicial or extrajudicial, can be of three types:

- *conviction ("constat")*, if with moral certainty the guilt of the accused is established with regard to the delict ascribed to him. In this case, the decision must indicate specifically the type of canonical sanction imposed or declared.

- *acquittal ("constat de non")*, if with moral certainty the innocence of the accused is established, inasmuch as no offence was committed, the accused did not commit the offence, the offence is not deemed a delict by the law or was committed by a person who is not imputable.

- *dismissal ("non constat")*, whenever it has not been possible to attain moral certainty with regard to the guilt of the accused, due to lack of evidence or to insufficient or conflicting evidence that the offence was in fact committed, that the accused committed the offence, or that the delict was committed by a person who is not imputable.

It is possible to provide for the public good or for the welfare of the person accused through appropriate warnings, penal remedies and other means of pastoral solicitude (cf. canon 1348 CIC).

The decision (issued by sentence or by decree) must refer to one of these three types, so that it is clear whether *"constat"*, *"constat de non"* or *"non constat"*.

VI. What penal procedures are possible?

85. By law, three penal procedures are possible: a judicial penal process; an extrajudicial penal process; or the procedure introduced by article 21 § 2, 2° SST.

86. The procedure provided for in article 21 § 2, 2° SS [7] is reserved for the most grave cases, concludes with a direct decision of the Supreme Pontiff and requires that, even though the commission of the delict is manifestly evident, the accused be guaranteed the right of self-defence.

87. For the judicial penal process, the relative provisions of the law should be consulted, either in the respective Codes or in articles 8-15, 18-19, 21 § 1, 22-31 SST.

88. The judicial penal process does not require a double conforming sentence; consequently, a decision rendered by a sentence in an eventual second instance becomes *res iudicata* (cf. art. 28 SST). Such a definitive sentence can be challenged only by a *restitutio in integrum*, provided elements are produced that make its injustice clear (cf. canons 1645 CIC, 1326 CCEO), or by a complaint of nullity (cf. canons 1619ff. CIC, 1302ff. CCEO). The Tribunal established for this kind of process is always collegiate and is composed of a minimum of three judges. Those who enjoy the right of appeal against a sentence of first instance include not only the

accused party who considers himself unjustly aggrieved by the sentence, but also the Promoter of Justice of the CDF (cf. art. 26 § 2 SST).

89. According to articles 16 and 17 SST, a judicial penal process can be carried out within the CDF or can be entrusted to a lower tribunal. With regard to the decision rendered, a specific letter of execution is sent to all interested parties.

90. Also in the course of a penal process, whether judicial or extrajudicial, the precautionary measures referred to in nos. 58-65 can be imposed on the accused.

a/ What is the extrajudicial penal process?

91. The extrajudicial penal process, sometimes called an *administrative process*, is a type of penal process that abbreviates the formalities called for in the judicial process, for the sake of expediting the course of justice without eliminating the procedural guarantees demanded by a fair trial (cf. canons 221 CIC and 24 CCEO).

92. In the case of delicts reserved to the CDF, article 21 § 2, 1° SST, derogating from canons 1720 CIC and 1486 CCEO, states that the CDF alone, in individual cases, *ex officio* or when requested by the Ordinary or Hierarch, may decide to proceed in this way.

93. Like the judicial process, the extrajudicial process can be carried out within the CDF or entrusted to a lower instance, or to the Ordinary or Hierarch of the accused, or to third parties charged with this task by the CDF, possibly at the request of the Ordinary or Hierarch. With regard to the decision rendered, a specific letter of execution is sent to all interested parties.

94. The extrajudicial penal process is carried out with slightly different formalities according to the two Codes. If questions arise concerning which Code is applicable (for example, in the case of clerics of the Latin rite who work in Eastern Churches or clerics of an Eastern rite who are active in Latin rite circumscriptions), it will be necessary to clarify with the CDF which Code is to be followed, and then to adhere strictly to the CDF's decision.

b/ *How is an extrajudicial penal process carried out according to the CIC?*

95. When an Ordinary is charged by the CDF with carrying out an extrajudicial penal process, he must first decide whether to preside over the process personally or to name a delegate. He must also appoint two assessors who will assist him or his delegate in the evaluative phase. In choosing them, it would be advisable to consider the criteria set forth in canons 1424 and 1448 § 1 CIC. It is also necessary to appoint a notary, according to the criteria given in no. 41. The appointment of a promoter of justice is not foreseen.

96. The aforementioned appointments are made by decree. These officials are required to take an oath to fulfil faithfully the task with which they have been entrusted and to observe secrecy. The administration of the oath must be recorded in the acts.

97. Subsequently, the Ordinary (or his delegate) must initiate the process by a decree summoning the accused. This decree must contain: the clear indication of who is being summoned; the place and time at which he must appear; the purpose for which he is being summoned, that is, to take note of the accusation (which the text of the decree is to set forth briefly) and of the corresponding proofs (which the decree need not list), and to exercise his right of self-defence.

98. Although not explicitly provided for by law in an extrajudicial process, nonetheless, since a penal matter is involved, it is most fitting that the accused, in accordance with the prescriptions of canons 1723 and 1481 §§ 1-2 CIC, be assisted by a procurator and/or advocate, either of his own choice or, otherwise, appointed *ex officio*. The Ordinary (or his delegate) must be informed of the appointment of the advocate by means of a suitable and authentic procuratorial mandate in accordance with canon 1484 § 1 CIC, prior to the session in which the

accusations and proofs are made known, in order to verify that the requirements of canon 1483 CIC have been met. [8]

99. If the accused refuses or fails to appear, the Ordinary (or his delegate) may consider whether or not to issue a second summons.

100. If accused refuses or fails to appear at the first or second summons, he is to be warned that the process will go forward despite his absence. This notification can be given at the time of the first summons. If the accused has failed or refused to appear, this should be noted in the acts and the process is to continue *ad ulteriora*.

101. On the day and time of the session in which the accusations and proofs are made known, the file containing the acts of the preliminary investigation is shown to the accused and to his advocate, if the latter is present. The obligation to respect the secret of office should be made known.

102. Particular attention should be given to the fact that, if the case involves the sacrament of Penance, respect must be shown for article 24 SST, which states that the name of the alleged victim is not to be revealed to the accused unless the accuser has expressly consented otherwise.

103. t is not obligatory that the assessors take part in the notification session.

104. Notification of the accusations and proofs takes place in order to give the accused the possibility of self-defence (cf. canon 1720, 1° CIC).

105. “Accusation” refers to the delict that the alleged victim or other person claims to have occurred, as this has emerged from the preliminary investigation. Setting forth the accusation means informing the accused of the delict attributed to him and any attendant details (for example, the place where it occurred, the number and eventual names of the alleged victims, the circumstances).

106. “Proofs” are all those materials collected during the preliminary investigation and any other materials acquired: first, the record of the accusations made by the alleged victims; then pertinent documents (e.g., medical records; correspondence, even by electronic means; photographs; proofs of purchase; bank records); statements made by eventual witnesses; and finally any expert opinions (medical, including psychiatric; psychological; graphological) that the person who conducted the investigation may have deemed appropriate to accept or have carried out. Any rules of confidentiality imposed by civil law should be observed.

107. All the above are referred to as “proofs” because, despite having been collected in the phase prior to the process, from the moment the extrajudicial process is opened, they automatically become a body of evidence.

108. At any stage of the process, it is legitimate for the Ordinary or his delegate to ask for the collection of further proofs, should it be considered appropriate on the basis of the results of the preliminary investigation. This can also occur at the request of the accused during the defence phase. The results will naturally be presented to the accused during that phase. The accused is to be presented with what was collected at the defence’s request, and a new session for presenting accusations and proofs is to be held, should new elements of accusation or proofs have emerged; otherwise, the material collected can be considered simply as further evidence for the defence.

109. The argument for the defence can be presented in two ways: a/ it can be accepted in session with a specific statement signed by all present (in particular by: the Ordinary or his delegate; the accused and his advocate, if any; the notary); or b/ through the setting of a reasonable time limit within which the defence can be presented in writing to the Ordinary or his delegate.

110. It should be carefully noted that, according to canon 1728 § 2 CIC, the accused is not bound to confess (admit) the delict, nor can he be required to take an oath to tell the truth.

111. The argument for the defence can clearly make use of all legitimate means, as for example the request to hear its own witnesses or to present documents and expert opinions.

112. For the admission of these proofs (and, in particular, the gathering of statements of eventual witnesses), the discretionary criteria permitted to the judge by universal law on contentious trials are applicable.[9]

113. Whenever the concrete case requires it, the Ordinary or his delegate is to assess the credibility of those taking part in the process.[10] According to article 24 § 2 SST, however, he is obliged to do so with regard to the credibility of the accuser should the sacrament of Penance be involved.

114. Since this is a penal process, the accuser is not obliged to take part in the process. The accuser has in fact exercised his right by contributing to the formation of the accusation and the gathering of proofs. From that moment, the accusation is carried forward by the Ordinary or his delegate.

c/ How is an extrajudicial penal process concluded according to the CIC?

115. The Ordinary or his delegate invites the two assessors to provide, within a certain reasonable time limit, their evaluation of the proofs and the arguments of the defence, in accordance with canon 1720, 2º CIC. In the decree, he can also invite them to a joint session to carry out this evaluation. The purpose of this session is evidently to facilitate analysis, discussion and debate. For such a session, which is optional but recommended, no particular juridical formalities are foreseen.

116. The entire file of the process is provided beforehand to the assessors, granting them a suitable time for study and personal evaluation. It is helpful to remind them of their obligation to observe the secret of office.

117. Although not required by law, it is helpful if the opinion of the assessors is set down in writing so as to facilitate the drafting of the subsequent final decree by the person charged to do so.

118. Similarly, if the evaluation of proofs and defence arguments takes place during a joint session, it is advisable that a series of notes on the interventions and the discussion be taken, also in the form of minutes signed by the participants. These written notes fall under the secret of office and are not to be made public.

119. Should the delict be established with certainty, the Ordinary or his delegate (cf. canon 1720, 3º CIC) must issue a decree concluding the process and imposing the penalty, penal remedy or penance that he considers most suitable for the reparation of scandal, the reestablishment of justice and the amendment of the guilty party.

120. The Ordinary should always keep in mind that, if he intends to impose a perpetual expiatory penalty, according to article 21 § 2, 1º SST he must have a prior mandate from the CDF. This is a derogation, limited to these cases, from the prohibition of inflicting a perpetual penalty by decree, laid down in canon 1342 § 2 CIC.

121. The list of perpetual penalties is solely that found in canon 1336 § 1 CIC, [11] along with the caveats contained in canons 1337 and 1338 CIC. [12]

122. Since it involves an extrajudicial process, it should be remembered that a penal decree is not a sentence, which is issued only at the conclusion of a judicial process, even if – like a sentence – it imposes a penalty.

123. The decree in question is a personal act of the Ordinary or of his delegate, and therefore should not be signed by the assessors, but is to be authenticated by the notary.

124. In addition to the general formalities applicable in the case of every decree (cf. canons 48-56 CIC), the penal decree must cite in summary fashion the principal elements of the accusation and the development of the process, but above all it must set forth at least briefly the reasons for the decision, both in law (listing, that is, the

canons on which the decision was based – for example, those that define the delict, those that define possible mitigating, exempting or aggravating circumstances – and, however concisely, the juridical logic that led to the decision to apply them) and in fact.

125. The statement of reasons in fact is clearly the more difficult, since the author of the decree must set forth the reasons which, by comparing the matter of the accusation and the statements of the defence (which he must summarize in his exposition), led him to certainty concerning the commission or non-commission of the delict, or the absence of sufficient moral certainty.

126. Since not everyone possesses a detailed knowledge of canon law and its formal language, a penal decree should primarily be concerned with explaining the reasoning behind the decision, rather than being concerned about precise and detailed terminology. Where appropriate, competent persons may be called upon for assistance in this regard.

127. The notification of the entire decree (therefore not simply the dispositive part) is to take place by the legitimate means prescribed (cf. canons 54-56 CIC [13]) and in proper form.

128. In all cases, an authenticated copy of the acts of the process (unless these had been previously forwarded) and of the notification of the decree must be sent to the CDF.

129. If the CDF decides to call to itself the extrajudicial penal process, all the formalities called for in nos. 91ff. will clearly be its responsibility, without prejudice to its right to request, if necessary, the cooperation of lower instances.

d/ *How is an extrajudicial penal process carried out according to the CCEO?*

130. As was stated in no. 94, the extrajudicial penal process as described in the CCEO is carried out with certain distinctive characteristics proper to that law. For the purpose of greater ease of explanation and to avoid repetitions, only those distinctive characteristics will be indicated: consequently, the following adjustments must be introduced to the praxis outlined above and shared with the CIC.

131. Above all, it must be remembered that the prescription of canon 1486 CCEO must be strictly followed, under pain of invalidity of the penal decree.

132. In the extrajudicial penal process according to the CCEO, there is no mention of assessors, but the presence of the promoter of justice is obligatory.

133. The session for the notification of the accusation and proofs must take place with the obligatory presence of the promoter of justice and the notary.

134. According to canon 1486 § 1, 2º CCEO, the session of notification and consequently the presentation of the defence is to take place solely with oral arguments. Nevertheless, this does not exclude, for such arguments, the defence being presented in written form.

135. Particular attention should be given to the question whether, on the basis of the gravity of the delict, the penalties listed in canon 1426 § 1 CCEO are indeed adequate for achieving the provisions of canon 1401 CCEO. In deciding the penalty to be imposed, canons 1429[14] and 1430[15] CCEO should be observed.

136. The Hierarch or his delegate should always remember that, according to article 21 § 2, 1º SST, the prohibitions of canon 1402 § 2 CCEO are abrogated. Therefore he is able to impose a perpetual expiatory penalty by decree, having obtained the prior mandate of the CDF required by the same article 21 § 2, 1º SST.

137. For the drawing up of the penal decree, the same criteria indicated in nos. 119-126 apply.

138. Notification of the decree will then take place in the terms of canon 1520 CCEO and in proper form.

139. For those things not mentioned here, reference should be made to what has been stated regarding the extrajudicial process according to the CIC, including the possibility that the process will take place in the CDF.

e/ *Does the penal decree fall under the secret of office?*

140. As previously mentioned (cf. no. 47), the procedural acts and the decision fall under the secret of office. All taking part in the process, in any capacity, should be constantly reminded of this.

141. The decree is to be made known in its entirety to the accused. The notification must be made to his procurator, if he has one.

VII. What can happen once a penal procedure ends?

142. According to the type of procedure employed, there are different possibilities available for those who were parties in the process.

143. If it was the procedure mentioned in article 21 § 2, 2º SST, inasmuch as it concerns an act of the Roman Pontiff, no appeal or recourse is admitted (cf. canons 333 § 3 CIC and 45 § 3 CCEO).

144. If it was a penal judicial process, the possibility of a legal challenge exists, namely, a complaint of nullity, *restitutio in integrum*, or appeal.

145. According to article 20, 1º SST, the only tribunal of second instance for appeals is that of the CDF.

146. To present an appeal, the prescriptions of law are to be followed, noting carefully that article 28, 2º SST modified the time limits for the presentation of an appeal, imposing a peremptory time limit of one month, to be calculated according to what is laid down in canons 202 § 1 CIC and 1545 § 1 CCEO.

147. If it was an extrajudicial penal process, recourse can be made against the decree that concluded it, within the terms provided by law, namely, by canons 1734ff. CIC and 1487 CCEO (cf. Section VIII).

148. According to canons 1353 CIC and 1319 and 1487 § 2 CCEO, appeals and recourses have a suspensive effect on the penalty.

149. Since the penalty is suspended and things return to a phase analogous to that prior to the process, precautionary measures remain in force with the same caveats and procedures mentioned in nos. 58-65.

VIII. What should be done in case of recourse against a penal decree?

150. The law provides different procedures, according to the two Codes.

a/ What does the CIC provide for in case of recourse against a penal decree?

151. According to canon 1734 CIC, whoever intends to present a recourse against a penal decree must first seek its revocation or emendation from the author (the Ordinary or his delegate) within the peremptory time limit of ten useful days from the legitimate notification of the decree.

152. According to canon 1735, the author, within thirty days after receiving the petition, can respond by emending his own decree (but before proceeding in this case, it is best to consult the CDF immediately), or by rejecting the petition. He also has the faculty of not responding at all.

153. Against an emended decree, the rejection of the petition, or the silence of its author, the one making recourse can apply to the CDF directly or through the author of the decree (cf. canon 1737 § 1 CIC) or through a procurator, within the peremptory time limit of fifteen useful days provided for by canon 1737 § 2 CIC.[16]

154. If hierarchical recourse is presented to the author of the decree, he must immediately transmit it to the CDF (cf. canon 1737 § 1 CIC). Thereafter (and also in the case that the recourse was presented directly to the CDF), the author of the decree need only await possible instructions or requests from the CDF, which in any case will inform him about the result of the examination of the recourse.

b/ *What does the CCEO provide for in case of recourse against a penal decree?*

155. The CCEO provides a simpler procedure than that of the CIC. In fact, canon 1487 § 1 CCEO provides only that recourse be sent to the CDF within ten useful days from the decree's notification.

156. The author of the decree in this case need only await instructions or requests from the CDF, which in any case will inform him about the result of the examination of the recourse. However, if the author is the Ordinary, he must take note of the suspensive effects of the appeal, mentioned in no. 148 above.

IX. Is there anything that should always be kept in mind?

157. From the time of the *notitia de delicto*, the accused has the right to present a petition to be dispensed from all the obligations connected with the clerical state, including celibacy, and, concurrently, from any religious vows. The Ordinary or Hierarch must clearly inform him of this right. Should the cleric decide to make use of this possibility, he must write a suitable petition, addressed to the Holy Father, introducing himself and briefly indicating the reasons for which he is seeking the dispensation. The petition must be clearly dated and signed by the petitioner. It is to be transmitted to the CDF, together with the *votum* of the Ordinary or Hierarch. In turn, the CDF will forward it and – if the Holy Father accepts the petition – will transmit the rescript of dispensation to the Ordinary or Hierarch, asking him to provide for legitimate notification to the petitioner.

158. For all singular administrative acts decreed or approved by the CDF, the possibility of recourse is provided by article 27 SST.[17] To be admitted, the recourse must clearly specify what is being sought (*petitum*) and contain the reasons in law (*in iure*) and in fact (*in facto*) on which it is based. The one making recourse must always make use of an advocate, provided with a specific mandate.

159. If an Episcopal Conference, in response to the request made by the CDF in 2011, has already provided its own written guidelines for dealing with cases of the sexual abuse of minors, this text should also be taken into account.

160. It sometimes happens that the *notitia de delicto* concerns a cleric who is already deceased. In this case, no type of penal procedure can be initiated.

161. If a reported cleric dies during the preliminary investigation, it will not be possible to open a subsequent penal procedure. In any case, it is recommended that the Ordinary or Hierarch inform the CDF all the same.

162. If an accused cleric dies during the penal process, this fact should be communicated to the CDF.

163. If, in the phase of the preliminary investigation, an accused cleric has lost his canonical status as a result of a dispensation or a penalty imposed in another proceeding, the Ordinary or Hierarch should assess whether it is

suitable to carry on the preliminary investigation, for the sake of pastoral charity and the demands of justice with regard to the alleged victims. If the loss of canonical status occurs once a penal process has already begun, the process can in any case be brought to its conclusion, if for no other reason than to determine responsibility in the possible delict and to impose potential penalties. In fact, it should be remembered that, in the determination of a more serious delict (*delictum gravius*), what matters is that the accused was a cleric at the time of the alleged delict, not at the time of the proceeding.

164. Taking into account the 6 December 2019 Instruction on the confidentiality of legal proceedings, the competent ecclesiastical authority (Ordinary or Hierarch) should inform the alleged victim and the accused, should they request it, in suitable ways about the individual phases of the proceeding, taking care not to reveal information covered by the pontifical secret or the secret of office, the divulging of which could cause harm to third parties.

..*

This *Vademecum* does not claim to replace the training of practitioners of canon law, especially with regard to penal and procedural matters. Only a profound knowledge of the law and its aims can render due service to truth and justice, which are especially to be sought in matters of *graviora delicta* by reason of the deep wounds they inflict upon ecclesial communion.

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[1] Art. 7 SST - § 1. A criminal action for delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by prescription after twenty years, with due regard to the right of the Congregation for the Doctrine of the Faith to derogate from prescription in individual cases. § 2. Prescription runs according to the norm of canon 1362 § 2 of the Code of Canon Law and canon 1152 § 3 of the Code of Canons of the Eastern Churches. However in the delict mentioned in art. 6 § 1 no. 1, prescription begins to run from the day on which a minor completes his eighteenth year of age.

[2] Art. 24 SST - §1. In cases concerning the delicts mentioned in art. 4 § 1, the Tribunal cannot indicate the name of the accuser to either the accused or his patron unless the accuser has expressly consented. § 2. This same Tribunal must consider the particular importance of the question concerning the credibility of the accuser. § 3. Nevertheless, it must always be observed that any danger of violating the sacramental seal is altogether avoided.

[3] Art. 8 SST - § 2. This Supreme Tribunal also judges other delicts of which a defendant is accused by the Promotor of Justice, by reason of connection of person and complicity.

[4] Canon 1428 CIC – § 1. The judge or the president of a collegiate tribunal can designate an auditor, selected either from the judges of the tribunal or from persons the bishop approves for this function, to instruct the case. § 2. The bishop can approve for the function of auditor clerics or lay persons outstanding for their good character, prudence and doctrine. Canon 1093 CCEO – § 1. A judge or the president of a collegiate tribunal can designate an auditor to instruct the case. The auditor is selected either from among the judges of the tribunal or from among the Christian faithful admitted to this office by the eparchial bishop. § 2. The eparchial bishop can approve for the office of auditor members of the Christian faithful outstanding for their good character, prudence and doctrine.

[5] Canon 1722 CIC – To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard to promotor of justice… can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or can even prohibit public participation in the Most Holy Eucharist… Canon 1473 CCEO – To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the hierarch, after having heard the promotor of justice and cited the accused, at any stage and grade of the penal trial can exclude the accused from the exercise of sacred orders, an office, a ministry, or another function, can impose or forbid

residence in some place or territory, or even can prohibit public reception of the Divine Eucharist…

[6] Canon 1339 CIC – § 1: An ordinary, personally or through another, can warn a person who is in the proximate occasion of committing a delict or upon whom after investigation, grave suspicion of having committed a delict has fallen. § 2. He can also rebuke a person whose behaviour causes scandal or a grave disturbance of order, in a manner accommodated to the special conditions of the person and the deed. § 3. The warning or rebuke must always be established at least by some document which is to be kept in the secret archive of the curia. Canon 1340 § 1 CIC: A penance, which can be imposed in the external forum, is the performance of some work of religion, piety, or charity. Canon 1427 CCEO – § 1: Without prejudice to particular law, a public rebuke is to occur before a notary or two witnesses or by letter, but in such a way that the reception and tenor of the letter are established by some document. § 2. Care must be taken that the public rebuke itself does not result in a greater disgrace of the offender than is appropriate.

[7] Article 21 § 2, 2° SST: The Congregation for the Doctrine of the Faith may: … 2° present the most grave cases to the decision of the Roman Pontiff with regard to dismissal from the clerical state or deposition, together with dispensation from the law of celibacy, when it is manifestly evident that the delict was committed and after having given the guilty party the possibility of defending himself.

[8] Can. 1483 CIC – The procurator and advocate must have attained the age of majority and be of good reputation; moreover, the advocate must be a Catholic unless the diocesan bishop permits otherwise, a doctor in canon law or otherwise truly expert, and approved by the same bishop.

[9] By analogy with canon 1527 CIC – § 1. Proofs of any kind which seem useful for adjudicating the case and are licit can be brought forward.

[10] By analogy with canon 1572 CIC – In evaluating testimony, the judge, after having requested testimonial letters if necessary, is to consider the following: 1) what the condition or reputation of the person is; 2) whether the testimony derives from personal knowledge, especially from what has been seen or heard personally, or whether from opinion, rumor, or hearsay; 3) whether the witness is reliable and firmly consistent or inconsistent, uncertain, or vacillating; 4) whether the witness has co-witnesses to the testimony or is supported or not by other elements of proof.

[11] Canon 1336 CIC – § 1. In addition to other penalties which the law may have established, the following are expiatory penalties which can affect an offender either perpetually, for a prescribed time, or for an indeterminate time: 1) a prohibition or an order concerning residence in a certain place or territory; 2) privation of a power, office, function, right, privilege, faculty, favor, title, or insignia, even merely honorary; 3) a prohibition against exercising those things listed under n. 2, or a prohibition against exercising them in a certain place or outside a certain place; these prohibitions are never under pain of nullity; 4) a penal transfer to another office; 5) dismissal from the clerical state.

[12] Canon 1337 CIC – § 1. A prohibition against residing in a certain place or territory can affect both clerics and religious; however, the order to reside in a certain place or territory can affect secular clerics and, within the limits of the constitutions, religious. § 2. To impose an order to reside in a certain place or territory requires the consent of the ordinary of that place unless it is a question of a house designated for clerics doing penance or being rehabilitated even from outside the diocese.

Canon 1338 CIC – § 1. The privations and prohibitions listed in can. 1336, § 1, nn. 2 and 3, never affect powers, offices, functions, rights, privileges, favors, titles, or insignia which are not subject to the power of the superior who establishes the penalty. § 2. Privation of the power of orders is not possible but only a prohibition against exercising it or some of its acts; likewise, privation of academic degrees is not possible. § 3. The norm given in can. 1335 for censures must be observed for the prohibitions listed in can. 1336, § 1, n. 3.

[13] Canon 54 CIC – § 1. A singular decree whose application is entrusted to an executor takes effect from the moment of execution; otherwise, from the moment it is made known to the person by the authority of the one

who issued it. § 2. To be enforced, a singular decree must be made known by a legitimate document according to the norm of law. Canon 55 CIC – Without prejudice to the prescripts of canons 37 and 51, when a very grave reason prevents the handing over of the written text of a decree, the decree is considered to have been made known if it is read to the person to whom it is destined in the presence of a notary or two witnesses. After a written record of what has occurred has been prepared, all those present must sign it. Canon 56 CIC – A decree is considered to have been made known if the one for whom it is destined has been properly summoned to receive or hear the decree but, without a just cause, did not appear or refused to sign.

[14] Canon 1429 CCEO – § 1. The prohibition against living in a certain place or territory can affect only clerics and religious or members of a society of common life in the manner of religious; an injunction to live in a certain place or territory affects only clerics enrolled in an eparchy, without prejudice to institutes of consecrated life. § 2. For the imposition of the injunction to live in a certain place or territory, the consent of the hierarch of that place is required, unless it is a case either of a house of an institute of consecrated life of papal or patriarchal right, in which case the consent of the competent superior is required, or of a house designated for the correction and reformation of clerics of several eparchies.

[15] Canon 1430 CCEO – § 1. Penal deprivations can affect only those powers, offices, ministries, functions, rights, privileges, faculties, benefits, titles, insignia, which are subject to the power of the authority that establishes the penalty, or of the hierarch who initiated the penal trial or imposed it by decree; the same applies to penal transfer to another office. § 2. Deprivation of the power of sacred orders is not possible, but only a prohibition against exercising all or some acts of orders, in accordance with common law; nor is deprivation of academic degrees possible.

[16] Canon 1737 § 2 CIC – Recourse must be proposed within the peremptory time limit of fifteen useful days, which… run according to the norm of can. 1735.

[17] Article 27 SST – Recourse may be had against singular administrative acts which have been decreed or approved by the Congregation for the Doctrine of the Faith in cases of reserved delicts. Such recourse must be presented within the preemptory period of sixty canonical days to the Ordinary Session of the Congregation (the *Feria* IV) which will judge on the merits of the case and the lawfulness of the Decree. Any further recourse as mentioned in art. 123 of the Apostolic Constitution *Pastor Bonus* is excluded.