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THE BISHOP'S SPECIAL SOLICITUDE FOR A PRESBYTER WHO HAS SERVED EXPIATORY PENALTIES FOR THE DELICT «CONTRA SEXTUM CUM MINORE»

Fecha de recepción: 25 de mayo de 2022

Fecha de aceptación: 19 de diciembre de 2022

ABSTRACT: A grave delict *contra sextum minore* committed by a presbyter may result in dismissal from the clerical state. However, in some cases it is possible to impose other expiatory penalties for a determined period. In this case, the offender does not lose the status of a cleric. This means that the incardination may continue, which involves special solicitude on the part of the diocesan bishop, according to c. 384. This paper attempts to examine the nature of this solicitude when the presbyter is the offender of a delict against which the Church has declared a ruthless struggle. Guided by the principle formulated by John Paul II of «zero tolerance», it is necessary consider the capacity of the punished presbyter to carry out pastoral ministry; recognition of his subjective rights, considering the situation in which he finds himself; necessary assistance by taking care of personalized spiritual and intellectual formation. This is an important step towards the creation of a professional system for the protection of minors in the Church.

KEY WORDS: special solicitude; punished presbyter; diocesan bishop.

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La peculiar solicitud del obispo para el presbítero que ha cumplido las penas expiatorias por un delito «contra sextum cum minore»

RESUMEN: La comisión de un delito grave *contra sextum cum minore* por parte de un presbítero puede dar lugar a la expulsión del estado clerical. Sin embargo, en algunos casos, es posible la imposición de otras penas expiatorias por un tiempo determinado. En ese caso, el reo no pierde su condición clerical. Eso hace que su incardinación se mantenga, lo que comporta una peculiar solicitud por parte del obispo diocesano, de acuerdo con el c. 384. Este artículo intenta responder a la pregunta de cómo debe ejercerse esa solicitud cuando el presbítero es reo de un delito al que la Iglesia ha declarado una lucha despiadada. Guiados por el principio formulado por Juan Pablo II de «tolerancia cero», se tienen en cuenta: la evaluación de la capacidad del presbítero castigado para llevar a cabo el ministerio pastoral; el reconocimiento de sus derechos subjetivos, teniendo en cuenta la situación en la que se encuentra; la asistencia necesaria, cuidando su formación espiritual e intelectual personalizada. Éste es un paso importante hacia la creación de un sistema profesional de protección de los menores en la Iglesia.

PALABRAS CLAVE: peculiar solicitud; presbítero castigado; obispo diocesano.

1. INTRODUCTION

The crisis of the sexual abuse of minors by some clergy has brought about important changes in the Church's legislation to better and more effectively protect minors. Penal canon law serves to compensate for the harm caused to the victim, but also considers the person of the offender. Penal norms, contrary to appearances, express the love of the Church for the faithful who have gone astray and committed a delict. The imposition of a penalty is aimed at reforming and converting the offender, and in the long run to care for his salvation¹.

¹ According to c. 1341, every penalty must aim at three common and concrete purposes: (1) to remedy the scandal that has arisen, (2) to compensate for the justice violated, and (3) to reform the offender. The CIC 1917, largely implementing the assumptions of the classical school of penal canon law, saw the purpose of ecclesiastical penalty in just retaliation, that is, in just retribution for the offence committed. The reform of the offender was seen as a secondary purpose. The CIC 1983 puts a stronger emphasis on the reform of the offender, but does not omit the other purposes of penalty, which is further emphasized by a recent amendment of Book VI. Cf. José Bernal. "Aspectos del derecho penal canónico antes y después del CIC de 1983". *Ius Canonicum* 49 (2009): 410-411.

In our opinion, the achievement of the purposes of the expiatory penalty in the case of a cleric punished for a delict against a minor does not end when the penalty ceases. The further help of the Church is needed first by the wronged person, but also by the guilty party — the presbyter — for whom the diocesan bishop is to be a «father and brother» in every situation². Although the delict against the sixth commandment of the Decalogue with a minor can and often should result in dismissal from the clerical state (c. 1398 §1), the subject of our research is the situation of a presbyter who has finished serving expiatory penalties imposed for a determined period and who remains in a clerical state³.

The purpose of an ecclesiastical penalty, such as reforming, falls within the scope of the solicitude that the diocesan bishop must surround his presbyters always and in all the circumstances of life. The diocesan bishop is «to protect their rights and take care that they correctly fulfil the obligations proper to their state and that the means and institutions which they need to foster spiritual and intellectual life are available to them. He should also take care that provision is made for their decent support and social assistance, according to the norm of law» (c. 384)⁴. The situation of

² Cf. Congregation for Bishops. *Directory for the Pastoral Ministry of Bishops «Apostolorum successores»* (22-II-2004). Città del Vaticano: Libreria Editrice Vaticana, 2004, 76. All English translations of Church documents: <https://www.vatican.va/content/vatican/en.html> (accessed December 3, 2021), unless otherwise stated.

³ Although there is no gradation of penalties in the CIC 1983, Alphonse Borras, Velasio De Paolis and Davide Cito stated that a certain hierarchy of sanctions emerges from the content of c. 1349: censures (excommunication, interdict and suspense) is the most severe, followed by expiatory life penalties and less severe various expiatory penalties imposed for a determined or an indeterminate period. Dismissal from the clerical state due to its effects and its life-long nature is the most severe expiatory penalty imposed on cleric. However, other penalties may be imposed, for a determined or an indeterminate period, in accordance with the principle of maintaining an appropriate balance between the gravity of the offence and the severity of the penalty. See Alphonse Borras. *Les sanctions dans l'Eglise: commentaire des canons 1311-1399*. Paris: Tardy, 1990, 114; Velasio De Paolis, and Davide Cito. *Le sanzioni nella Chiesa. Commento al Codice di Diritto Canonico Libro VI*. Roma: Urbaniana University Press, 2001, 225.

⁴ In c. 384, the duty of the bishop is defined by expressing *peculiari sollicitudine* (*special solicitude*): «Episcopus dioecesanus peculiari sollicitudine prosequatur presbyteros quos tamquam adiutores et consiliarios audiat, eorum iura tutetur et curet ut ipsi obligationes suo statui proprias rite adimpleant iisdemque praesto sint media et institutiones, quibus ad vitam spiritualem et intellectualem fovendam egeant; item curet ut eorum honestae sustentationi atque assistentiae sociali, ad normam iuris, prospiciatur».

the presbyter punished for the delict *contra sextum cum minore* requires special attention. The bishop should take care that the presbyter, despite the errors of life of great moral and canonical importance, punished in accordance with canon law, duly fulfils his duties. He should also secure the rights of the subject in accordance with canon law norms. It may seem erroneous that such a line of reasoning puts the person of the wrongdoer at its centre. In truth, this is not so. The canonical solicitude for a presbyter punished for a grave delict is, in the deepest sense, an action aimed at the protection of minors, as we shall try to show.

The cause of scandal to the faithful may be both the lack of a decisive response to the delict committed and the negligence of bishop in fulfilling the duty of special solicitude. In many countries, the public questions the actions of a superior after a presbyter who has committed a delict has served his penalty. According to forensic science, the risk of recidivism is a serious concern. As the *Catechism of the Catholic Church* teaches, «scandal is an attitude or behaviour which leads another to do evil»⁵. It is in this sense, as a *bad example*, *bad influence* or *demoralization*, and not as *indignation* caused by an immoral act, that scandal should also be seen in the sense of canon law. From the canonist's point of view, taking up this problem should not be motivated by media outrage — although the issue of communicating with the world about abuse is very important — but by concern for the correct use of canonical tools not only in penal law, but also in church administration. The perpetrator of scandal can be both the one who breaks the law by harming a minor and the one who has neglected his duties as a superior. The bishop has a duty to govern, which he should not neglect (c. 391 §1).

The aim of the paper is to answer the question of what the legal foundations of the bishop's special solicitude for a presbyter are who has finished serving expiatory penalties for the delict *contra sextum cum minore* are and what this consists of. The situation of the guilty party does not abolish the obligation of such care, but on the contrary, it should urge the superior to take practical measures aimed primarily at protecting minors, but also for the spiritual good of the cleric.

⁵ *Catechism of the Catholic Church* (11-X-1992). Washington DC: United States Conference of Catholic Bishops, 2019, 2284.

2. THE DOCTRINAL FOUNDATIONS FOR THE CANON 384

John Paul II, in his post-synodal apostolic exhortation *Pastores gregis*, stated that a bishop who has a *special relationship* with his presbyters should accompany them «as a father and brother in the fundamental stages of their ministerial life, starting with their first steps in the pastoral ministry»⁶. The Directory for the Pastoral Ministry of Bishops *Apostolorum successores* drew attention to the source of this relationship in the context of canon law. The *juridical bonds* between the bishop and the presbyter derive «from the divine constitution of the Church» and should appear «as a natural consequence of the spiritual communion each one has with God (cf. John 13,35)»⁷. This means that the relationship between bishop and presbyter must be inspired and nourished by love and faith. The greater the union of the will and intentions of these two subjects, the deeper the union with Christ, who continues his ministry as the invisible Head of the Church acting through a visible hierarchy⁸. The directory obliges the bishop to accompany all the members of single presbyterate, that is, to show equal care and attention also to those presbyters who are struggling with the difficulties of a human and spiritual nature⁹.

The juridical bonds between bishop and presbyter are directly referred to in c. 384, which imposes on the diocesan bishop the duty of special solicitude for presbyters subject to him. It has its own legal foundations:

1. in belonging to the presbyterate of a given diocese, with the proviso, however, that the duty of special solicitude to the full extent applies only to presbyters incardinated in the diocese.
2. in the relationship of incardination, because the ordinary of incardination, by virtue of the law, incurs the duty of far-reaching

⁶ John Paul II. "Post-Synodal Apostolic Exhortation *Pastores gregis* (16-X-2003)", 47. *Acta Apostolicae Sedis* 96 (2004): 887-888.

⁷ *Apostolorum successores*, 76.

⁸ «The relationships between the bishop and the diocesan priests should rest most especially upon the bonds of supernatural charity so that the harmony of the will of the priests with that of their bishop will render their pastoral activity more fruitful». Second Vatican Council. "Decree on the Pastoral Office of Bishops in the Church *Christus Dominus* (28-X-1965)", 28. *Acta Apostolicae Sedis* 58 (1966): 687. 673-701.

⁹ *Apostolorum successores*, 81.

responsibility and special solicitude for the cleric in the spiritual and living sphere (c. 271 §1; c. 1274).

3. in the ministry of the cleric (c. 281 §1).

The Second Vatican Council did not adopt a purely administrative concept of the authority of the bishop. César Izquierdo rightly considered that a purely administrative approach showed an «incomplete vision of the priestly ministry in the Church» and that a member of the presbyterate headed by the bishop should remain in communion with him, which is not possible without the voluntary recognition of his authority¹⁰. The inclusion of both juridical and extra-legal arguments, theological and ethical, in the justification of the communion of these two subjects, leads us to affirm that this relationship is not possible without an attitude rooted in the understanding and will of the superior, in which he perceives the presbyter as a value. The basis of the special bond between them, and thus the basis for the duty to give special solicitude to the presbyter, is the fact that he has been ordained and incardinated in the particular Church. The communion between the bishop and the presbyter is not possible without the responsibility of the superior for his subject. The term *responsibility* probably comes from Roman law and etymologically derives from the words: *responsio* and *habilitas*¹¹. The responsibility can therefore be understood as a response given to someone or in connection with something: to the voice of God, the moral law, the duty resulting from values, the voice of conscience, juridical duty, or in the most human dimension, to the voice of another person crying out for help. A Christian, much less an ecclesiastical superior, cannot refuse to help the wronged and also offenders, but help does not mean protection from the consequences of evil deeds¹². From a Christian perspective, we think that the bishop's duty of

¹⁰ Cf. César Izquierdo. "Notas para la comprensión de la obediencia del sacerdote diocesano". In *La formación de los sacerdotes en las circunstancias actuales: XI Simposio Internacional de Teología de la Universidad de Navarra*, edited by Lucas F. Mateo-Seco et al., 681. Pamplona: Servicio de Publicaciones de la Universidad de Navarra, 1990.

The English translation is ours.

¹¹ Cf. David Johnston. *Roman Law in Context. Key Themes in Ancient History*. Cambridge: Cambridge University Press, 1999, 22.

¹² This approach, unfortunately, has happened in the past. The Holy See acknowledged this in the *Historical Introduction to the norms of the Motu Proprio Sacramentorum Sanctitatis Tutela* of 2001: «A "pastoral attitude" to misconduct was

special solicitude for the presbyter subject to him cannot be limited to a juridical duty, and the first area of the bishop's responsibility should be his conscience.

By ordaining a deacon, a man becomes a cleric and is incardinated into the particular Church or personal prelature for which he was ordained (c. 266 §1). The eminent canonists, Matteo Conte a Coronata and Javier Hervada, considered incardination to be a legal act¹³. Eduardo Labandeira was of a different opinion, distinguishing between original incardination, which becomes *ipso facto* through the ordination of the diaconate; derivative incardination is possible *a iure* under certain conditions; and formal incardination, possible *ab homine* by decree of the bishop. Only in the latter case is a legal act on the part of the authority necessary, which is not incardination, but its cause. For Labandeira, incardination is a legal relationship that excludes a relationship of serfdom, enslaving or based on economic premises. The subjects of the relationship are the cleric and the concrete particular Church or the personal prelature¹⁴.

In our view, the wording of c. 384 and the duty of special solicitude contained therein support Labandeira's approach. Incardination constitutes a legal norm relationship between at least two legal entities in the

preferred and canonical processes were thought by some to be anachronistic. A "therapeutic model" often prevailed in dealing with clerical misconduct. The bishop was expected to "heal" rather than "punish". An over-optimistic idea of the benefits of psychological therapy guided many decisions concerning diocesan or religious personnel, sometimes without adequate regard for the possibility of recidivism». *Congregation for the Doctrine of the Faith*. "The norms of the *Motu Proprio Sacramentorum sanctitatis tutela* (2001): Historical introduction". *Communicationes* 42 (2010): 351. This diagnosis was developed by Benedict XVI, who stated that there was a belief that the Church could no longer be a Church of law, but a Church of love, so it should not punish. The Pope Emeritus also drew attention to the imperfections of penal canon law. Cf. Benedict XVI, and Peter Seewald. *Light of the World: The Pope, The Church and The Signs of the Times*. San Francisco: Ignatius, San Francisco, 2010, 18.

¹³ Cf. Matthaeus Conte a Coronata. *Institutiones iuris canonici*. Vol. 1. Turín: Marietti, 1950, 199; Javier Hervada. "La incardinación en la perspectiva conciliar". *Ius Canonicum* 7, no. 14 (1967): 507.

¹⁴ The author does not definitively decide whether the relationship of union or hierarchical dependence between the bishop and the priest is primary, since both occur simultaneously, and the Second Vatican Council uses one term: *hierarchical communion*. Cf. Eduardo Labandeira. "La incardinación *ipso iure* en otra diócesis y su amparo por la Sección 2.^a de la Signatura Apostólica". *Ius Canonicum* 21, no. 42 (1981): 399.

form of reciprocal rights and duties. In other words, a legal relationship occurs when one entity is obliged and the other is entitled, e.g., to special solicitude. The duties and rights of entities are defined by a legal norm. The incorporation of a cleric into the diocese unites him with the bishop, with the clergy, and with other faithful by establishing various theological and juridical relationships with them. Compared to other social relationships, however, legal relationships are distinguished by the fact that their formation, constituent elements, change and cessation are related to the content of the norm of positive law¹⁵.

The Second Vatican Council clearly prefers the biblical image of *shepherding* in relation to the mission of the hierarchy in the Church¹⁶. Jose Antonio Souto Paz considered that it was not only a symbolic dimension, but a question of expressing in a deeper and closer way to the truth the essence of the hierarchical mission. In this way, an excessively formalistic conception is overcome, which placed the relationship between the faithful and the hierarchy within the narrow framework of the superior — subject relationship¹⁷. We think that the biblical images of *shepherding* and *caring for the sheep* make it possible to better understand the responsibility of the bishop for the presbyter who has made serious mistakes in life, with the proviso, however, that the solicitude for the sheep concerns primarily those who have been harmed. The bishops carry out this responsibility in various ways: by listening, instructing, giving advice, encouraging, and by good example. The exercise of responsibility under canon law requires the exercise of administrative power because life in the Church is the life of a hierarchically and organically organized community, in which there is an authority that issues precepts and subjects who carry out these precepts¹⁸. All clerics must respect the legitimate, competent authorities and their decrees, unless they are contrary to divine law, human dignity, human

¹⁵ Cf. Antonio Martínez Blanco. “Problemática actual del Derecho de la Iglesia (la relación jurídico-canónica en la perspectiva de la revisión postconciliar del Derecho Canónico)”. *Anales de derecho* no. 3 (1982): 62.

¹⁶ Cf. Second Vatican Council. “Dogmatic Constitution on the Church *Lumen Gentium* (21-XI-1964)”, 27. *Acta Apostolicae Sedis* 57 (1965): 32-33.

¹⁷ Cf. José Antonio Souto Paz. “La potestad del obispo diocesano”. *Ius Canonicum* 7, no. 14 (1967): 416.

¹⁸ The Church is hierarchically organized, but its organization is based not only on anthropological necessity, but on the express will of the Founder. Cf. Nestor Alejandro Ramos. *El Misterio de la Iglesia*. Buenos Aires: Ágape, 2009, 230.

rights, normative acts of the universal and particular Church, and certain normative acts issued by a civil authority. The achieving goals within the framework of special solicitude requires the exercise of executive power (*potestas executiva*), which is part of the power of governance (c. 135 §1). The function of executive power is to take care of the implementation of the norms and to ensure their observance by means of administrative measures and the appropriate organization of offices¹⁹.

A manifestation of responsibility under the CIC 1983 is the duty of special solicitude for presbyters. Sometimes it involves the need to make administrative decisions for the good of the community and of specific people. If the superior makes administrative decisions guided by pastoral motives, it will be justified to appeal also to the reason and will of the cleric, so that he is not merely a passive executor of orders. According to Izquierdo, we can speak of the presbyter's co-responsibility consisting of sharing with his bishop the care for the community of the Church, for which the priest must always be ready. Hierarchical cooperation between the presbyter and the bishop includes two essential dimensions: co-responsibility and obedience. This means that the presbyter ordained and incardinated into the diocese has the *duty to shepherd*, which in practice may mean refraining from some actions and undertaking other functions in the place indicated by the superior. The co-responsibility for the community means, on the one hand, readiness to verify one's real capacity for pastoral ministry in its various dimensions and, on the other hand, to discern the social situation in which the community finds itself²⁰.

¹⁹ Klaus Mörsdorf rightly pointed out that administration is not just about executing laws. Sometimes, it is taken on its own initiative and executed as a well-understood real necessity. Cf. Klaus Mörsdorf. "De actibus administrativis in Ecclesia". In *Ius Populi Dei. Miscellanea in honorem Raymundi Bidagor*, edited by Urbano Navarrete, and Raimundo Bidagor, vol. III, 11. Roma: Università Gregoriana Editrice, 1972.

²⁰ Cf. Izquierdo, 681-682. Jesús M. Carrasquilla Ospina stated that in the case of the Church, one can speak of integral social responsibility, because the Church's mission is realized wherever man lives. In all these places, the Church seeks new ways of pastoral ministry, without forgetting its own supernatural vocation. Building a just community means that people take individual and social responsibilities that do not blur in the bureaucratic apparatus but have the dignity of each human being in mind. Cf. Jesús M. Carrasquilla Ospina. "Discurso eclesial y responsabilidad social". *Franciscanum* 55, no. 159 (2013): 221-225.

Pope Francis stated in his address to the participants in the meeting of the Congregation for Bishops of February 27, 2014, that proper care for the sheep requires reflection on no. 27 of the Dogmatic Constitution on the Church *Lumen Gentium*. The council fathers explained that the «the pastoral office or the habitual and daily care of their sheep» is entrusted to the bishops completely. The Holy Father appealed for more attention to be paid to the two words that define care for the sheep: «habitual» and «daily»²¹. In the past, the solicitude of some pastors for minors, and consequently for the clerics who commit delicts, was not *habitual* and *daily*. For this reason, the Pope has established norms for drawing consequences for bishops and religious superiors who have neglected their duties²².

3. THE IMPOSITION OF PENALTIES AND THE SITUATION AFTER ITS CESSATION

The postulate that the bishop should give proper and just care to all presbyters, including those who have gone astray, requires an analysis of the situation of the presbyter punished for the delict *contra sextum minore*. As already mentioned, the pastor's solicitude for the cleric subject to him is to be habitual, that is, continuous and uninterrupted. It is to last during the penalty and after its cessation, because the penalty imposed deprived the offender of some good, but this good is not the clerical state, and consequently, the relationship of incardination.

²¹ Francis, *Address to a Meeting of the Congregation for Bishops* (27-II-2014). Accessed December 19, 2021, https://www.vatican.va/content/francesco/en/speeches/2014/february/documents/papa-francesco_20140227_riunione-congregazione-vescovi.html.

²² Pope Francis clarified the already existing norms for the removal of a person from ecclesiastical office for grave reasons, issuing in 2016 the *motu proprio Come una madre amorevole*. The Holy Father underlined that among the aforesaid «grave reasons» is the negligence of a bishop in the exercise of his office, and in relation to cases of sexual abuse inflicted on minors and vulnerable adults. See Francis. «Apostolic Letter issued Motu Proprio *Come una madre amorevole* (4-VI-2016)». *Acta Apostolicae Sedis* 108 (2016): 715-717. In turn, the apostolic letter *motu proprio Vos estis lux mundi* of 2019 should be considered an important step in the creation of a uniform law protecting minors in the Church. One of the most important changes is the clear penalization of obstruction by the ecclesiastical superior of investigations against clerics accused of a delict *contra sextum minore*. See Francis. «Apostolic Letter issued Motu Proprio *Vos estis lux mundi* (7-V-2019). *L'Osservatore Romano* (10-V-2019): 10.

3.1. THE IMPOSITION OF PENALTY

The CIC 1917, at the head of the list of delicts against the sixth commandment of the Decalogue, listed an act committed with a minor below the age of 16. A cleric who committed such a delict was to be suspended, declared infamous, deprived of any office, benefice, dignity, responsibility, if he had such whatsoever, and in more serious cases, he was to be deposed (c. 2359 §2). A similar solution was adopted by the CIC 1983 (before the amendment to Book VI), according to which a cleric who commits such an act with a minor under the age of 16 «is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants» (c. 1395 §2). In 2001, Pope John Paul II issued the document *Sacramentorum Sanctitatis Tutela* and added to it appropriate norms in which the abuse of clerics against minors up to the age of 18 was placed among the more grave delicts reserved to the Congregation for the Doctrine of the Faith, the so-called *delicta graviora*²³. Any reasonable suspicion of committing such a delict had to be reported from that point on to the Holy See. In 2010, Pope Benedict XVI amended these regulations by publishing the *Normae de gravioribus delictis*²⁴.

On December 8, 2021, two important papal documents entered into force. One of them is the amended norms of *Sacramentorum sanctitatis tutela*²⁵, the other is the long-awaited revision of the penal discipline of the Church, i.e. the prescriptions amending part of the CIC 1983 in the field of penal law²⁶. These documents should be treated complementarily, as the reform of Book VI of the Code forced the amendment of the prescriptions in the case of the most serious crimes in order to adapt them to the law in force in this area. In the revised Book VI, attention should

²³ See John Paul II. “Apostolic Letter issued Motu Proprio *Sacramentorum Sanctitatis Tutela* (30-IV-2001)”. *Acta Apostolicae Sedis* 93 (2001): 737-739.

²⁴ See Congregation for the Doctrine of the Faith. “Normae de delictis Congregationi pro Doctrina Fidei reservatis seu Normae de delictis contra fidem necnon de gravioribus delictis (21-V-2010)”. *Acta Apostolicae Sedis* 102 (2010): 419-434.

²⁵ See Congregation for the Doctrine of the Faith. “Rescriptum ex Audientia SS. mi: Rescritto del Santo Padre Francesco con cui approva le Norme sui delitti riservati della Congregazione per la Dottrina della Fede (11-X-2021)”. *Communicationes* 53 (2021): 437-445.

²⁶ See Francis. “Apostolic Constitution *Pascite gregem Dei* (23-V-2021)”. *Communicationes* 53 (2021): 13-16 (*Liber VI*: 41-65).

be drawn to the previously non-existent c. 1398, which covers crimes *contra sextum cum minore* committed not only by clerics who belong to the reserved jurisdiction of the Dicastery for the Doctrine of the Faith, but also crimes of this kind committed by non-clerical religious and by lay people who exercise functions in the Church, as well as all such acts involving adults, but committed with violence or abuse of power.

The transfer of a case to the Holy See does not prejudice the cleric's guilt or whether he will be punished. However, there is a possibility, and often even an obligation, to take appropriate precautionary measures. A priest who is accused of molesting minors should not have any contact with children or young people until the accusations against him are clarified²⁷. This is a general rule, but it is not absolute, since each case must be assessed individually, taking into account its specific characteristics. It is necessary to carry out prior discernment that will precede the imposition of administrative measures. Their automatic imposition may lead to causing harm to the priest by, for example, destroying his good name, and in some it could turn out to be simply unnecessary — for instance, when it is a case of reporting events from the past, and there is a moral certainty that the priest does not pose any threat at present.

The bishop should take care that, for the sake of the wronged and the spiritual good of the cleric, the traces of a possible delict are not erased, and the proceedings are not hindered. The requirement to be a father and brother in such a situation should be associated with concern for the spiritual good of the priest and his mental condition. If necessary, the bishop should resort to the help of specialists²⁸.

When a bishop reports to the Dicastery for the Doctrine of the Faith a case of sexual abuse of children or young people, a protocol number is first assigned to the case, which means accepting the case for examination. The ordinary then receives information on the actions to be taken. In practice, in the first phase, the dicastery reaffirms the precautionary measures that have been taken or urges that, with the good of the victims in mind, additional measures are taken to protect children and young

²⁷ Cf. Marino Mosconi. "I principali doveri del vescovo davanti alla notizia di un delitto più grave commesso contro la morale o nella celebrazione dei sacramenti". *Quaderni di diritto ecclesiale* 25, no. 3 (2012): 304-305.

²⁸ See more Damián Guillermo Astigueta, "Il diritto penale in dialogo con la psicologia e la morale". *Periodica de re canonica* 103, no. 2 (2014): 341-367.

people. In addition, the dicastery decides what actions to begin, having a whole range of possible disciplinary and penal procedures. According to established practice, the relevant actions led to three main ways of proceeding: direct intervention with the Pope with a request to dismissal from the clerical state, a judicial procedure (in a diocese or tribunal of the dicastery) or an administrative one, resorting to purely disciplinary measures, without initiating a penal process²⁹. In the apostolic constitution *Pascite gregem Dei*, which amends Book VI of the CIC 1983, Pope Francis warned that only pastoral and extra-legal encouragement or suggestions are not enough to correct evil, because with the passage of time criminal behaviour becomes so entrenched that its correction becomes more and more difficult and causes in many cases scandal and confusion among the faithful. The Holy Father also points out that the non-application of penal canon law in the past has caused the Church a lot of damage and led to scandals³⁰.

C. 1341, before the amendment, indicated that the ordinary should initiate penal process «only after he has ascertained» that other measures dictated by pastoral care are insufficient. After the amendment, the ordinary is obliged to apply repressive measures whenever he considers, based on the data obtained in the framework of the preliminary investigation, that other measures are not effective for achieving the three purposes of the canonical penalty. In other words, the ordinary has the duty to use penal canon law — understood not as a measure of last resort but as a mere instrument by which the superior fulfils the duty of special solicitude for the presbyter — the offender of the delict. Consequently, the whole discipline contained today in Book VI is subject to this very principle. What happens when the expiatory penalties imposed for a determined period still have not led to the fulfilment of all or one of the three purposes of canonical penalty? Following the reasoning set out, if the ordinary considers that this is the case after the cessation of the penalty, he must take appropriate administrative measures³¹.

²⁹ See Charles Jude Scicluna. “Delicta graviora ius processuale”. In *Questioni attuali di diritto penale canonico*, edited by Associazione Canonistica Italiana, 85-92. Città del Vaticano: Libreria Editrice Vaticana, 2012.

³⁰ *Pascite gregem Dei*, 13-16.

³¹ It would be unjust and contrary to the principles of the law if the presbyter were to be punished again for an offence for which he had already been punished once. Already, Gratian derived the existence of the principle *ne bis in idem* from the

In the amended Book VI, the catalogue of expiatory penalties has been expanded. They are better systematized in c. 1336. There are also new expiatory penalties: a fine, deprivation of all or part of the ecclesiastical remuneration (the Episcopal Conference must issue regulations on this subject), a prohibition against wearing ecclesiastical or religious dress. Pope Francis' reforms are the fulfilment of postulates that have long been discussed in the science of canon law³².

In CIC 17, the term *vindicative penalty*³³ was used, which was not included in the current code. As Bernal pointed out, while recognizing this change as positive, the vindicative aspect of penalty should not be regarded as a manifestation of the irrational instinct of revenge and self-defence. The existence of repressive penalties in canon law is at the same time a confirmation of the existence of the theological basis of penalty. Their rejection would have serious consequences: it would have the effect of calling into question the very possibility of committing criminal acts. From the anthropological point of view, man is punished because he has voluntarily committed evil and is responsible for his actions before God and people. Sluggishness in punishment is tantamount to undermining a person's ability to take responsibility for his actions³⁴. The existence of expiatory and at the same time repressive penalties is necessary because of the possibility of taking actions that are reprehensible by their nature, and consequently because of the moral obligation to respond to them.

Old Testament and used the phrase: *non iudicabit Deus bis in id ipsum*. See Friedrich Christian Schroeder. "Die Rechtsnatur des Grundsatzes *ne bis in idem*". *Juristische Schulung* no. 3 (1997): 228. The principle formulated in Roman law prohibits the double evaluation of the same act. The measures taken against the presbyter must therefore be administrative and not restrictive.

³² It is worth recalling the following papers: Juan Ignacio Arrieta. "Il progetto di revisione del libro VI del Codice di Diritto Canonico". *Archiv für katholisches Kirchenrecht* 181, no. 1 (2012): 57-74; John A. Renken. "Penal Law in the Church Tomorrow: Foundations for the Revision of Book VI". *Studies in Church Law* 10 (2014): 53-75; Thomas Schüller. "Das 'neue' Strafrecht - eine Reform in kleinen Schritten". *Klerusblatt* no. 101 (2021): 251-253; José Luis Sánchez-Girón. "El proyecto de reforma del derecho penal canónico". *Ius Canonicum* 54, no. 108 (2014): 567-602.

³³ C. 1939 §2: «Huic regulae locus est sive agatur de irroganda poena vindicativa vel censura, sive de ferenda sententia declaratoria poenae vel censurae in quam quis inciderit».

³⁴ Cf. José Bernal. "Sentido y régimen jurídico de las penas expiatorias". *Ius Canonicum* 38, no. 76 (1998): 596.

Bernal stated that any penalty that is vindictive in nature causes suffering to the subject, but on the other hand, it is an affirmation of justice of ethical significance³⁵. Making administrative decisions about the priest in the context of special solicitude should take into account his suffering, although it is a consequence of his own actions. However, the priority is to counteract injustice, also at the expense of the suffering of the offender.

Bernal and Angel Marzoa argued that the imposition and service of a penalty results in juridical regeneration, which consequently enables the offender to reintegrate into society. It is therefore understandable that there is talk of the offender's right to the course of justice, because the accused possesses an inalienable dignity that the crime can overshadow but will never erase. For Bernal, the just expiatory punishment associated with repression (suffering) is the desire to restore the punished to society³⁶; for Marzoa, to deprive someone of the potential to be punished is to deprive him of a basic right, which is to compensate with his discomfort for the social damage caused by the delict. The desired goal is precisely to compensate and, consequently, reintegrate the offender of the delict into society³⁷. Both authors distinguished between juridical regeneration aimed at social regeneration and reparation on the spiritual plane that escapes the law.

In our opinion, it is not always possible to achieve the goal of social regeneration once the penalty has ceased. Of course, the acceptance of the severe effects of penalty is to lead to this, but in the case of delicts against the personal dignity of the youngest, and thus the weakest, additionally committed by people who, by virtue of their ordination, are to guard this dignity and promote it, juridical regeneration must continue after the end of the penalty³⁸. The extent of the phenomenon of paedophilia caused at the beginning of the twenty-first century a global and long-lasting crisis

³⁵ Cf. *Ibid.*, 599.

³⁶ Cf. *Ibid.*, 601.

³⁷ Cf. Ángel Marzoa. "El Derecho penal canónico al servicio de la misión santificadora de la Iglesia". In *Derecho canónico a los diez años de la promulgación del código (aspectos de la función santificadora de la Iglesia)*, edited by Carlos Melero Moreno, 282. Salamanca: Universidad Pontificia de Salamanca, 1994.

³⁸ In the amended Book VI, sexual offences against minors are moved from the title «*Delicts against special obligations*» to the title: «*Offences against human life, dignity and liberty*»: in this way the legislator makes it clear that the violation of the dignity of the victim is in the foreground (c. 1397-1398).

in the whole Church³⁹. In the fight against this phenomenon waged by the Church, it is necessary to address the very difficult and complicated topic of reintegration of the offenders of these delicts into society. Is this possible at all and to what extent? This theme does not bypass the community of the Church, which, on the one hand, rightly and justly commands, and on the other, must take up in a Christian spirit the theme of the social reintegration of such persons, among whom there are also those who are in the clerical state. In our opinion, it is necessary to extend the concept of juridical regeneration to the application of administrative measures to a presbyter who has finished serving his penalty. This is required by the principle of justice in social life, which is safeguarded by law⁴⁰. Even though we give priority to spiritual regeneration expressed in authentic conversion, we consider it necessary to carry out the dispositions of c. 384 as an extension of the process of juridical regeneration and integration of the punished into society. It is also necessary to discern and not to impose administrative measures in those cases where the penalty itself has led the priest to the aforementioned juridical regeneration.

3.2. THE CAPACITY TO UNDERTAKE PASTORAL MINISTRY AFTER THE CESSATION OF PENALTY

Punishment is a retaliatory action on the part of society against social disorganization caused by delict. The cause of penalty is the delict

³⁹ Pope Francis in harsh words called paedophilia a kind of holocaust: the silent extermination of many thousands of children. During his speech at the end of the first-ever summit of global importance on paedophilia (February 21-24, 2019), Francis stated: «I am reminded too of the cruel religious practice, once widespread in certain cultures, of sacrificing human beings — frequently children — in pagan rites». Francis. *Meeting "The protection of minors in the Church". Address at the end of the Eucharistic concelebration (24-II-2019)*. Accessed January 3, 2022, https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190224_incontro-protezioneminori-chiusura.html.

⁴⁰ CIC 1983 uses the term *ius* to describe the law. Some authors derive this term from the word *iustitia*. Hervada argues that originally a law is not a law or a moral capacity, but a *thing*, something that one should justly receive. This is how the term *ius* was understood by the Romans. The thing due to minors is the effective protection and respect of their inviolable dignity, and the thing due to the punished presbyter is to determine the way he exercises his priestly duties. Cf. Javier Hervada. *Critical Introduction to Natural Law*. Montréal: Wilson & Lafleur Ltée, 2006, 25-31.

committed, as CIC 17 expresses in c. 2215: «ad deliquentis correctionem et delicti punitionem». The penalty is supposed to be an ailment that as a means achieves a specific social goal. It cannot be an end in itself, but only a means to obtain another social good⁴¹. In our opinion, the social good that must be achieved by the imposition of penalty, as well as by administrative measures, is the capacity of the offender to undertake pastoral ministry in a way that does not endanger minors and does not destabilize the life of the ecclesial community⁴². This should be the basis of juridical regeneration in the situation of a cleric punished for this type of delict, to which Barnal and Marzoa generally refer. It is necessary once again to stress the need for responsibility on the part of the ecclesiastical authority arising from the relationship of incardination, since the ordinary of incardination by law incurs the duty of far-reaching responsibility and special solicitude for the presbyter. This means that while the ecclesiastical authority has already responded in the penal sense to the delict by imposing penalty, there is still a need for the superior to respond to several duties: (1) to the voice of God, the moral law, the duty resulting from values, the voice of conscience (evangelical concern for the weakest, the wronged); (2) legal duty (special solicitude under c. 384, prescriptions on the prevention and protection of minors); (3) to the voice of a person crying for help (a victim of abuse, but also its offender). As Pope Francis stated, this responsibility «falls, above all, on the successors of the Apostles, chosen by God to be pastoral leaders of his People, and demands from them a commitment to follow closely the path of the Divine Master»⁴³.

⁴¹ Cf. Bernal. *Sentido y regimen*, 602.

⁴² Pope Francis expressed this necessity in harsh words: «The abuse of minors is truly a horrible crime... We know that it is a serious problem everywhere, but my concern is about the Church. A priest who does this betrays the body of the Lord, because this priest is supposed to lead this boy or girl, this young man or woman, to holiness. And these young people, these children are trusting... and then instead of leading them to holiness, he abuses them. And this is extremely serious! It is like... let me give just one example: it is like saying a black mass. You are supposed to lead them to holiness and you create a life-long problem for them ...». Francis. *Interview with journalists during the return flight from the Holy Land* (26-V-2014). Accessed January 7, 2022, http://w2.vatican.va/content/francesco/pl/speeches/2014/may/documents/papa-francesco_20140526_terra-santa-conferenza-stampa.html

⁴³ *Vos estis lux mundi*, Introduction.

In assessing the presbyter's capacity to undertake pastoral ministry after the end of the penalty, reference should be made to the concept of incardination, which Hervada⁴⁴, Julián Herranz⁴⁵, and José María Ribas⁴⁶ refer primarily to the relationship of service. They cited no. 28 of decree *Christus Dominus*: «In the care of souls, however, the first place is held by diocesan priests who are incardinated or attached to a particular Church, for they have fully dedicated themselves in the service of caring for a single portion of the Lord's flock». Without entering the discussion of whether the relationship of service characterizes incardination in the first place, there is no doubt that it necessarily contains it⁴⁷. As a result of incardination, a close bond is born between the cleric and his diocese or other particular Church, and between the cleric and his ordinary⁴⁸. In this way, priests can be used in pastoral care with greater benefit and according to their needs. This corresponds to the idea of ordination, which is given not for the cleric's own good, but for the common good of the Church.

To what extent can a presbyter punished for a delict *contra sextum cum minore* be used in pastoral ministry with benefit and according to needs? Is this even possible? It can be presumed that if the Dicastery for the Doctrine of the Faith instructs the diocesan bishop to carry out an administrative procedure, it considers the results of the preliminary investigation to be insufficient for the expulsion of someone from the clerical state, which may be done in a judicial procedure (c. 1342 §2). This may mean that there is a need in the Church to work better to prepare the staff of the diocesan curia for professional conduct preliminary investigations, or it may indeed recognize the capacity of a presbyter who, although he may have seriously erred in his ministry, can still work for the good of the Church as a pastor. In our analyses, we focus on this second thesis.

⁴⁴ Cf. Hervada. *La incardinación*, 507.

⁴⁵ Cf. Julián Herranz. "El nuevo concepto de incardinación". *Palabra* no. 12-13 (agosto-septiembre 1966): 27.

⁴⁶ Cf. José María Ribas. *Incardinación y distribución del clero*. Pamplona: EUNSA, 1971, 221.

⁴⁷ Labandeira disagreed with the claim that incardination primarily refers to the relationship of service. He argued that both those incardinated in the diocese and those working in it, who remain incardinated into their diocese of origin, can devote themselves to full ministry. Cf. Labandeira, 399.

⁴⁸ Cf. Izquierdo, 680-684.

3.2.1. *The principle of «zero tolerance»*

Any actions of the superior towards the offender must absolutely consider the principle of zero tolerance for paedophilia formulated by John Paul II. He summoned the catholic bishops in the United States of America to the Vatican in 1993 and then sent an official letter to the bishops ordering the principle of zero tolerance for paedophilia and treating it as a «great evil». The Holy Father wrote then, recalling the words of Christ, that it is better for an offender «to have a great millstone hung around his neck and to be drowned in the depths of the sea» than to scandalize the little ones, to harm the weaker and defenceless⁴⁹.

The principle of «zero tolerance» was applied in subsequent ecclesiastical laws, beginning with the *motu proprio Sacramentorum sanctitatis tutela*. It should also be applied by every ecclesiastical superior who takes special solicitude of the presbyter punished for the delict, acting in accordance with c. 384. He must keep this in mind when assessing the presbyter's capacity for pastoral ministry. Charles Scicluna stated in one of the interviews that in the fight against paedophilia, even the best documents and prescriptions are not enough. They are used by both the Holy See and the local Churches in different countries. There is a need for a change in mentality and culture, as well as the goodwill of many people⁵⁰. Thus, the observance of c. 384 and its new reception in the context of sexual abuse among clergy is an urgent need. This prescription can be an effective tool in the implementation of the tasks assigned to the Church by successive popes. Pope Francis stated that for the phenomena of abuse «in all their forms, never happen again, a continuous and profound conversion of hearts is needed, attested by concrete and effective actions that involve everyone in the Church, so that personal sanctity and moral commitment can contribute to promoting the full credibility of the Gospel message and the effectiveness of the Church's mission»⁵¹.

⁴⁹ John Paul II. *Letter to the Bishops of the United States of America* (11-VI-1993). Accessed January 20, 2022, https://www.vatican.va/content/john-paul-ii/en/letters/1983/documents/hf_jp-ii_let_03041983_us-bishops.html.

⁵⁰ Cf. Charles Jude Scicluna, and Edward Augustyn. *Proces* (30-IX-2019). Accessed January 22, 2022, <https://www.tygodnikpowszechny.pl/proces-160535>.

⁵¹ *Vos estis lux mundi*, Introduction.

In the interview cited, Scicluna said that it is necessary to take the Ten Commandments seriously, to atone for sin, if it happened, but also to remember respect for every human being. It is forbidden to victimize any social groups. The worst thing is to persecute or criminalize this or that category of people⁵². These words are worth recalling in the context of presbyters who have served their penalty and continue their juridical regeneration, seeing the legitimacy of the administrative measures imposed on them.

The principle of «zero tolerance» must always be properly understood, so that, while condemning completely any form of sexual abuse of minors, account is taken of the diversity of criminal situations, the personality of the perpetrator, the principle of proportionality and also canonical equity (*aequitas canonica*) in any restrictions on the pastoral ministry. To apply juridical norms without taking into account the whole set of elements demanded by the canonical equity established in the doctrine and recognizable would be a distortion of the legislator's intention. When imposing administrative measures, account must therefore be taken of the circumstances of time, place, the qualities of the persons concerned and the reasons influencing the emergence of specific legal situations.

3.2.2. *The capacity assessment and application of administrative measures*

An essential element of the relationship of service that characterizes incardination is pastoral ministry. The Second Vatican Council recalled that ministers, by virtue of the sacrament of Holy Orders, have a special duty to lead people to salvation, that is, to pastoral ministry⁵³. Already in the Middle Ages, a principle was introduced into the system of ecclesiastical law: *Bonum animarum suprema lex* (c. 1752). The salvation of souls (*salus animarum*), that is, the spiritual good of the faithful, must be the rule of all activity in the Church. As already mentioned, sexual delicts harm the personal dignity of the victims. The pastor must uphold

⁵² Cf. Scicluna, and Augustyn.

⁵³ «For the nurturing and constant growth of the People of God, Christ the Lord instituted in His Church a variety of ministries, which work for the good of the whole body. For those ministers, who are endowed with sacred power, serve their brethren, so that all who are of the People of God, and therefore enjoy a true Christian dignity, working toward a common goal freely and in an orderly way, may arrive at salvation». *Lumen gentium*, 18.

the personal dignity of every human being, especially the weakest. In addition, the responsibility of the pastor for the faithful entrusted to him, and consequently, the responsibility of the superior for his subject, are even greater, because, as Pope John XXIII taught, «when, furthermore, we consider man's personal dignity from the standpoint of divine revelation, inevitably our estimate of it is incomparably increased. Men have been ransomed by the blood of Jesus Christ. Grace has made them sons and friends of God, and heirs to eternal glory»⁵⁴.

The reaching for the deepest reasons of the law, it should be stated that no one can commit himself to what he is unable to fulfil. The Romans expressed this principle in the words: «Ad impossibile nemo tenetur»⁵⁵. The decretalists made this principle a legal rule: «Nemo potest ad impossibile obligari»⁵⁶. Whoever undertakes pastoral ministry among minors must, with his psychological capacities and acquired social position (authority), guarantee that he will fulfil the duties assumed on him. The *Vademecum on certain points of procedure in treating cases of sexual abuse of minors committed by clerics* grants the right to take administrative measures in the event of reporting a crime in the following circumstances (1) in cases of improper and imprudent conduct, (2) to protect the common good, (3) to avoid scandal⁵⁷. In our opinion, the above indications should also be followed in the case of a presbyter punished for a delict.

For the application of administrative measures at least for determined period the following premises are sufficient: the protection of the common good and the avoidance of scandal. This, in turn, is highly probable if, after the end of the penalty, a priest punished for the delict *contra sextum minore* is appointed to the pastoral ministry with minors, even if he objectively does not pose a threat, e.g., because of successful therapy and in the absence of sexual preference disorders⁵⁸. It seems that these two

⁵⁴ John XXIII. "Encyclical *Pacem in Terris* (11-IV-1963)", 10. *Acta Apostolicae Sedis* 55 (1963): 259.

⁵⁵ Inst. 3, 19, 2; D. 50, 17, 185.

⁵⁶ Reg. 6, R. I., in VI°.

⁵⁷ Cf. Dicastery for the Doctrine of the Faith. *Vademecum on certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics* (5-VI-2022). *Communicationes* 54 (2022): 161-193, 20.

⁵⁸ The statistics show that paedophiles account for about 5% to 25% of perpetrators of sexual crimes against minors. The others are people with other disorders: for them the child is the so-called surrogate object. Cf. Dawn Fisher, and Tony Ward,

premises will be present in each case by the mere fact of being convicted of that delict, at least immediately after the cessation of the penalty. The imposition of administrative measures in this case is an action in the interest of minors, but also of the presbyter and of the whole community. The prohibition of pastoral ministry with minors should be issued after the end of the penalty in any such case, until the premises cease to exist. It may happen that both premises never subside, and it will therefore be necessary to maintain administrative measures, above all the prohibition of pastoral ministry with minors. If, however, the premises subside or their character changes, consideration may be given to abandoning or changing administrative measures, but the abandonment of the prohibition of pastoral ministry with minors should be preceded by deep and prudent reflection.

For the same reasons, a presbyter who has been punished after serving his penalty should not exercise the office of pastor (*parochus – pastor propius*) of the parish entrusted to him, exercising pastoral care over the community of the faithful of different ages (c. 519). The consideration should also be given to restrictions on other offices and functions, the exercise of which by a priest with a criminal record could jeopardise the common good or cause scandal. If the delict was of a public nature, reverberated widely in the media, consideration should be given to issuing other prohibitions that consider that the public appearance of the priest in circumstances of strong social agitation will not accelerate social reintegration⁵⁹. For the same reasons, the bishop may consider it right to limit or revoke the faculty to preach in accordance with c. 764.

A more difficult issue is the premise indicating the threat of improper and imprudent conduct of the presbyter towards minors. It is of a psychological nature and administrative measures, especially the prohibition

and Anthony Beech. "Pedophilia". In *Practitioner's Guide to: Evidence-Based Psychotherapy*, edited by Jane E. Fisher, and William T. O'Donohue, 276-289. New York City: Springer, 2006; Ryan Hall, and Richard Hall. "A Profile of Pedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic Issues". *Mayo Clinic Proceedings* 82, no. 7 (2007): 457-471.

⁵⁹ Gerardo Núñez used the term *hypersensitivity* to refer to the contemporary social atmosphere persisting because of scandalous offences against the sixth commandment of the Decalogue. Cf. Gerardo Núñez. "Escándalo y canon 1399. Tutela penal del celibato sacerdotal. Comentario a la Sentencia del Tribunal de la Rota Romana de 9 de julio de 2004". *Ius Canonicum* 54, no. 108 (2014): 745.

of pastoral ministry with minors, must necessarily be taken if it occurs. The presbyter may be incapable of establishing an interpersonal relationship with a particular group of the faithful identified by the age, but he may nevertheless establish proper pastoral relations with others and thus work fruitfully for the Church in a prudently indicated place⁶⁰. We would therefore have to deal with a relative incapacity, referring to a specific category of faithful⁶¹. While the prudence and experience of the bishop and his collaborators are sufficient to assess the premises for the protection of the common good and to avoid scandal, in the case of assessing the threat of improper and imprudent conduct, it is necessary to use the help of experts. The expert will properly perform the task ordered if the superior, in the instructions given to him, precisely specifies the issues in which he is particularly interested in resolving. In the first place, they should concern the diagnosis of the presbyter's personality in terms of possible danger of improper and imprudent conducts towards minors in accordance with current medical knowledge. The superior should carefully consider not only the conclusions of the experts, even if they were consistent, but also the other circumstances of the case (c. 1579 §1). The superior evaluates these applications freely, in further decisions he is not bound even by the unanimous opinion of experts, but due to the importance of the case and the absolutely prioritized principle of *zero tolerance*, should not disregard these opinions.

⁶⁰ The concept of psychological incapacity is known and thoroughly elaborated in canonical matrimonial law. It is possible to know the nature of marriage, to be aware of the seriousness and importance of the essential rights and duties of marriage, and at the same time to be incapable of realizing them because of psychological reasons. The psychological incapacity to fulfil essential marital duties most often concerns the sexual sphere.

⁶¹ By analogy, based on matrimonial canon law, one of the problems connected with the interpretation of c. 1095 no. 3 is the concept of relative incapacity to assume essential matrimonial duties, that is, incapacity occurring only in relation to a specific partner. The concept of relative incapacity appeared, among others, in the jurisprudence of the Roman Rota already in the early seventies, above all in the judgments of c. Serrano Ruiz. In the judgment of c. Serrano Ruiz of 5 April 1973, it was pointed out that a human person not affected by any serious personality disorder or inability to relate to others, may nevertheless be incapable to establish interpersonal relations with that particular person whom he or she has chosen as his spouse. Then, in the name of conjugal personalism, this kind of incapacity renders the conjugal consent invalid. See "Dec. c. Serrano Ruiz (5-IV-1973)". *Rota Romanae Decisiones* 65 (1973): 326.

Most authors, based on specialized research, state that disturbed sexual preferences cannot be cured, but we can only try to shape the behaviour of the offender so that he avoids situations that carry the risk of re-committing the offence⁶². This means that the premise based on the diagnosed disorder will never subside, thus maintaining a permanent prohibition of pastoral ministry with minors seems obvious. Other administrative measures, such as a precept to remain under permanent therapeutic care, should be used if necessary.

A useful instrument in the event of the above premise is a measure of vigilance introduced into the amended penal canon law. The offender should be placed under vigilance if there is a danger of repetition of the offence. The decree must specify what the measure of vigilance is to consist of (c. 1339 §5). In the situation of a presbyter punished in accordance with c. 384, vigilance expressing special solicitude must concern the proper exercise of obligations of clerics, compliance with administrative measures, but also the guarantee of subjective rights, decent subsistence, social welfare, and the way in which spiritual and intellectual life is developed. In our opinion, the bishop should exercise this vigilance personally, or appoint a suitable person to exercise this vigilance on behalf of the bishop⁶³.

The amended Book VI regulates the use of penal precept. It is a means at the disposal of the ordinary, which he can use when it is necessary to force someone to behave in a certain way, to intervene in time and prevent

⁶² See William Pithers et al. "Relapse prevention of sexual aggression". *Annals of the New York Academy of Sciences* 528, no. 1 (1988): 244-260; William Pithers, Janice K. Marques, and Alan Marlatt. "Relapse prevention with sexual aggressives: a self-control model of treatment and maintenance of change". In *The sexual aggressor: Current perspectives on treatment*, edited by Joanne G. Greer, and Irving R. Stuart, 214-239. New York: Van Nostrand Reinhold, 1983; Tony Ward, and Stephen M. Hudson. "Sexual offenders' implicit planning: a conceptual Model". *Sexual Abuse: A Journal of Research and Treatment* 12, no. 3 (2000): 189-202. A different opinion is William L. Marshall: see William Marshall. "Are pedophiles treatable? Evidence from North American studies". *Seksuologia Polska (Polish Sexology)* 6, no. 1 (2008): 39-43.

⁶³ The procedure in treating cases of sexual abuse of minors committed by clerics provides for situations in which the bishop entrusts the conduct of procedures on his delegate. If the competent ordinary or hierarch deems it appropriate, he may entrust the preliminary investigation to another suitable person. Cf. Dicastery for the Doctrine of the Faith. *Vademecum*, 21. In the case of the extrajudicial process, it is possible to appoint a delegate. Cf. *Ibid.*, 95.

the escalation of undesirable behaviour (c. 1339 §4)⁶⁴. The penal precept as a norm of individual conduct applies in two cases: if on one or more occasions warnings or corrections have been made to someone to no effect or if it is not possible to expect them to have any effect. The violation of a penal precept is an offence (c. 1321).

An important issue is the restrictions related to the administration of the sacrament of penance. The protection of minors in the Church involves the application of the norms of ecclesiastical and civil law, but the sphere of *forum internum* is no less important. Thus, the faculty to hear the confessions (c. 966 §1), known for centuries, which guarantees valid absolution imparted by a presbyter having jurisdiction over the penitent, in the situation of a delict *contra sextum minore* acquires a new, juridical and pastoral meaning: it is to protect minors from possible abuses on the part of priests incapable to administration this sacrament for psychological reasons, but also to safeguard the common good and remove the danger of scandal⁶⁵.

According to c. 384, the bishop who takes special solicitude of presbyters is to «listen to them as his assistance and advisers». Nothing prevents the punished priest from serving his expertise and skills if he has them. Even when imposing a penalty, no one can be deprived of academic

⁶⁴ Jorge Miras stated that the exercise of *ius puniendi* by its very nature requires the existence of effective legal safeguards that protect personal dignity and subjective rights, removing the risk of injustice and arbitrariness. The author noted that the administrative nature of the penal precept does not necessarily reduce legal certainty, provided that the rules governing the exercise of executive power are properly respected. Cf. Jorge Miras. "Precepto penal". In *Diccionario General de Derecho Canónico*, edited by Javier Otaduy, and Antonio Viana, and Joaquín Joaquín Sedano, vol. VI, 358-360. Navarra Thomson-Aranzadi: Pamplona 2012. A more precise regulation of the application of the penal precept is intended to do so.

⁶⁵ Based on the conducted research, Roberto Beretta came to the conclusion that in most cases only during confession is the offender of the delict *contra sextum cum minore* faced with the judgment of his actions. See more Roberto Beretta. *Oltre l'abuso: Lo scandalo della pedofilia farà cambiare la Chiesa?* Milano: Ancora, 2019. A reasonable doubt arises: is a priest punished for such a delict capable of objective judgment of the sin *contra sextum minore*? If knowledge of his offence is known in the community, will he not be the preferred confessor for the offenders of such delicts? Given the decisive struggle waged by the Church against the phenomenon of paedophilia; as well as the sanctity of this sacrament, the ecclesiastical authority must be cautious in giving the faculty to confess to priests punished for this type of offence too readily.

degrees (c. 1338 §2), which Bernal explains by invoking human rights, as well as charitable and humanitarian premises⁶⁶.

3.2.3. *Special solicitude activities of ecclesiastical superiors: the American model and the model developed in german-speaking countries*

Following the reaction of ecclesiastical superiors, and thus the *praxis* taking shape in the various particular Churches, one can point to two models of restriction of pastoral ministry, developed in countries where scandals were made public in the first place and caused a serious crisis in the Church. Therefore, we can talk about the American model and the model developed in the German-speaking countries. These two models become an inspiration for ecclesiastical superiors in different countries.

A more than year-long CNN investigation into abuse at Salesian High School, in Richmond, California, found that clergy who abused them had been repeatedly protected and moved to other locations over the decades. The journalists described the case of two Salesians who remained in the clerical state, but their ministry was permanently limited so that they could not have any pastoral contact with minors. A Salesian spokesman for the Western Province of the United States explained that the restrictions include «having no contact with minors, no involvement in public ministry and no unaccompanied overnight trips»⁶⁷. Limiting the ministry of a clergy punished for pedophilia and shifting it to a non-pastoral dimension is also practised in the Church in Canada. An investigation by CBC The Fifth Estate and the Radio-Canada Enquête documented a Quebec clergyman's long-term crimes. In one of the statements given to The Fifth Estate by The Canadian Conference of Catholic Bishops (CCCC), the non-code term «administrative leave» was used, which in practice means the administrative removal of a priest suspected or punished of pedophilia from pastoral ministry⁶⁸.

⁶⁶ Cf. Bernal, *Sentido y régimen*, 613.

⁶⁷ Cf. Nima Elbagir et al. *Pedophile priests operated at this California school for decades*. Accessed January 20, 2023, <https://edition.cnn.com/interactive/2019/12/us/salesians-of-don-bosco-intl/>

⁶⁸ Cf. Scott Anderson, and Lynette Fortune, and Mark Kelley. *'I told him about my problems': Priest's confession of child abuse used to boost case against Catholic Church*. Accessed January 20, 2023, <https://www.cbc.ca/news/canada/priests-abuse-catholic-church-1.5464028>

Many commentators note that the American model of «zero tolerance» strives to ensure that a priest punished for pedophilia cannot serve as a pastor at all, which actually predestines him to exclusively non-pastoral activities (administration, work in the archive, work in the library, etc.).⁶⁹ In the USA, great emphasis has been placed on accountability and transparency, which in many cases means a permanent limitation of the pastoral activity of clergy who have been punished for a crime. In addition to legal measures, the publication of the names of convicted clergy members on diocesan websites is particularly effective, although painful for those involved. According to a 2020 study, 77% of dioceses in the U.S. have published lists of punished clergy members. As Patrick M. O'Brien stated, «secular media can't be counted on to do that. A diocesan communicator or Catholic journalist can be. Fact-checking, providing insight into sources, and verification of the truth or falsehood of statements provide the public with reliable information. That builds trust in the Church. Transparency happens when bishops allow their diocesan communicators and journalists to see source documents, vet statistics, question claims, and interview subjects with direct knowledge of the facts. The discipline of verification is not disrespect or disloyalty; it is the opposite. Catholic communicators have an obligation to respectfully question bishops, attorneys, and chancery officials. They have a duty to verify that facts are indeed facts»⁷⁰.

Such a decisive approach to the problem and the permanent removal of convicted clergy from ministry via various instruments can be explained by the fact that before 1994, bishops in the USA largely relied on the research of experts in psychiatry. Many of them claimed that pedophilia could be effectively treated. Priests guilty of sexual abuse were sent to one of several treatment centers. Bishops have often relied on expert judgments to determine whether priests are fit for pastoral ministry. Unfortunately, this practice in many cases turned out to be wrong and led to further abuse⁷¹.

⁶⁹ Cf. Wunibald Müller. «Die neuen Fälle von sexuellem Missbrauch werfen Fragen auf. Keine falsche Stärke vortäuschen». *Herder Korrespondenz* 3 (2010): 119-123.

⁷⁰ Patrick M. O'Brien. «Transparency as a means to rebuild trust within the Church: a case study in how Catholic dioceses and eparchies in the United States have responded to the clergy sex abuse crisis». *Church, Communication and Culture* 5, no. 3 (2020): 479.

⁷¹ Cf. Germain Grisez. *Submission to the Ad Hoc Committee on Sexual Abuse – USCCB*. Accessed January 21, 2023, <https://www.catholicculture.org/culture/library/view.cfm?recnum=4249>

According to a report on the abuse of minors in the Archdiocese of Munich and Freising, before 2010, and especially in the 50s, the conduct of bishops towards priests committing abuse in the Church in Germany was characterized by «leniency and unjustified forbearance». Even priests convicted in a court of law were still employed in pastoral work, sometimes without any restrictions. According to the researchers, it was an expression of the prevailing clericalism⁷². Currently, the solutions proposed in German-speaking countries aim towards an individualized approach to perpetrators of crimes, based on the latest achievements of medical knowledge. A pastoral approach is also called for, not only to victims of abuse, but also to perpetrators. According to Laun, former auxiliary bishop of the Archdiocese of Salzburg, nothing is more pastoral and more in line with Christian charity than the clear proclamation of the Church's teaching on sexuality, combined with effective and accessible therapy for clergy with sexual disorders. The hierarch noted that the perpetrator needs not only a doctor, but also a confessor. Experience shows that the pastoral care of people affected by pedophilia requires great sensitivity⁷³.

According to Müller, a distinction should be made between a priest who has committed many cases of pedophilia, whose prognosis in terms of his ability to control his sexuality is zero, and a priest who long ago, in a particularly difficult mental state, devoid of any real pedophilic tendencies, behaved indecently. The author of the commentary states, however, that in both cases the extent of the damage caused to the victim is decisive. However, there may be cases that a priest who committed an act once underwent successful psychotherapy and was not diagnosed with sexual disorders will return to pastoral ministry in some dimension. If, however, there is even a shadow of doubt that the inappropriate behavior will be repeated, he must be excluded from pastoral ministry. The admission of a punished priest to pastoral ministry should take place under control and observation — for example, in the form of supervision or informing those in his immediate surroundings about his past⁷⁴.

⁷² Cf. Marion Westpfahl et al. *Sexueller Missbrauch Minderjähriger und erwachsener Schutzbefohlener durch Kleriker sowie hauptamtliche Bedienstete im Bereich der Erzdiözese München und Freising von 1945 bis 2019*. München: Westpfahl Spilker Wastl Rechtsanwälte, 2022, 399.

⁷³ Cf. Andreas Laun. *Kirche und Pädophilie*. Accessed January 21, 2023, <https://kath.net/news/2707>

⁷⁴ Müller, 119-123.

A common and unquestionable measure taken by ecclesiastical superiors in different countries is to limit their pastoral ministry. The nature and manner of this restriction may vary in nature and depend on various factors. Its main purpose is to eliminate the threat to minors, and thus prevent contacts of a cleric posing a threat with minors during his pastoral duties.

4. PROTECTION AND RESTRICTION OF THE RIGHTS OF THE PUNISHED PRESBYTER

The subjective rights flow either from the natural dignity of the human person or from objective law, that is, from the norms of social coexistence. The clergy occupy a special place among the people of God, which is why the legislator in the Code of Canon Law for this state has provided a separate catalogue of duties and rights (cc. 273-289). What subjective rights should be paid attention to by a bishop guarding the rights of the punished presbyter? Can they be restricted and under what conditions?

Souto-Paz stated that when it comes to organized pastoral activity in the diocese, there is no space for declaring subjective rights. Common interest comes to the fore⁷⁵. We do not fully share this view. Of course, there is such a common interest: it is, in our opinion, to care for the souls of the faithful. There is no greater good in the Church than the union of all in Christ. Subjective rights are there precisely to safeguard the common interest. Using the phrase *cura animarum*, the whole salvific activity of the Church in the triad was traditionally described: soul - care - sin (in the first place it was necessary to protect the soul from sin)⁷⁶. Therefore, pastoral activities are addressed in essence to a single soul: a person, even when we are talking about community pastoral care, e.g., in a parish. For this reason, we supported the postulate of not allowing a presbyter with

⁷⁵ «En cambio, cuando se trata de ordenar, dirigir y ejecutar la actividad pastoral organizada de la diócesis no hay lugar a la declaración de derechos subjetivos de los miembros, sino de un interés común que puede garantizarse jurídicamente mediante la denuncia a una instancia superior de las deficiencias de la organización». Souto-Paz, 444.

⁷⁶ Cf. José María Soto Rábanos. "Visión y tratamiento del pecado en los manuales de confesión de la baja edad media hispana". *Hispania sacra* 58, no. 118 (2006): 412.

a criminal past against a minor to take possession of the office of the pastor (*parochus*), because the parish priest is by nature the pastor of all parishioners, including minors. The same applies to all communities involving minors. According to c. 217, a minor has the right to a Christian education, which presupposes the attainment of personal maturity. The very act of making a presbyter an educator who does not himself possess such maturity is a violation of the subjective right of the minor and threatens the common interest of the *cura animarum*.

The declaration of subjective rights of the punished presbyter is supported by the wording of c. 384, which obliges the bishop to uphold the rights of presbyters. Subjective rights, however, refer to subjective juridical situations in which it is a question of delineating the sphere of personal autonomy of the members of the People of God⁷⁷. Therefore, the case of the punished presbyter must be referred to the subjective juridical situation in which he finds himself. On this basis, it is possible to redefine the sphere of his personal autonomy. It would be unacceptable to use one's rights to the detriment of the community because the right exists for the sake of the other person, who in this community is also guaranteed his rights. The faithful, in exercising their rights, should bear in mind the common good of the Church, the rights of others and their own duties towards others. On the other hand, the competent ecclesiastical authority, for the sake of the common good, may restrict the exercise of the rights of the faithful (c. 223 §§1-2). In the situation of a priest who has been punished, the guarantee of his subjective rights must not jeopardise the rights of minors: to life, dignity, and liberty. It is also for this reason that the legislator lists the offences against these rights in Title VI of the amended Book VI (c. 1397-1398).

4.1. THE RIGHT TO OBTAIN ECCLESIASTICAL OFFICE

According to c. 274 §1 «only clerics can obtain offices for whose exercise the power of orders or the power of ecclesiastical governance is required». This provision corresponds to the prescriptions of c. 129 §1 and c. 150. The guaranteeing this right to a presbyter punished for paedophilia is a serious problem for many bishops. The difficulty arises from

⁷⁷ Cf. Souto-Paz, 444.

the fact that the vast majority of offices in the Church are associated with pastoral ministry, and the situation forces the superior to pay special attention to whether the exercise of an office or function will not pose a threat to minors.

This provision does not mean that there is a subjective right to exercise a particular office or function in a diocese. According to Souto-Paz, in guaranteeing this right, the diocesan bishop enjoys a wide autonomy, limited only by the very nature of ecclesiastical authority, the general norms of the Church, the intervention of the Roman Pontiff, and the already mentioned common interest of the members of the particular Church⁷⁸, which, in our opinion, is secured by subjective rights, with particular regard to the rights of minors.

In addition to the right to obtain the office, there is also the obligation to undertake it and to fulfil every function, both permanent and temporary (c. 274 §2). This duty derives from the obedience which the clergy are called to show to their ordinary (c. 273) and from the principle of justice, since the cleric was ordained not only for his own good, but above all for the ministry in the particular Church and for the good of souls.

4.2. THE RIGHT TO EQUITABLE REMUNERATION

The guaranteeing this right is another problem that bishops must face. According to c. 281 §1 «since clerics dedicate themselves to ecclesiastical ministry, they deserve remuneration, which is consistent with their condition, taking into account the nature of their function and the conditions of places and times, and by which they can provide for the necessities of their life as well as for the equitable payment of those whose services they need». It is not enough to provide social assistance, as required by c. 281 §2. The wording of c. 281 §1 draws attention to three elements: *ordination*, *incardination* and *dedicating to ecclesiastical ministry*. It is therefore an office entrusted by the bishop to a cleric who is called to carry out specific functions in the Church (in the liturgy and outside it). There is an appropriate remuneration associated with this. Nor can there be a question of a penal reduction in remuneration after serving the penalty since no one can be punished twice.

⁷⁸ Cf. *ibid.*

What should the providing of remuneration depend on? As with all other priests, the remuneration should: (1) consider the nature of the office exercised and the circumstances of the place and time, (2) be adapted to the position occupied, (3) be sufficient for one's own needs⁷⁹. Providing an appropriate office or function and the related remuneration can be understood as solicitude for the presbyter, but also for the persons to whom he has financial obligations as the offender of the delict. Penances and the repairing of damages in the individual sense is the responsibility of a particular offender and in a broad sense, the whole community headed by the superior.

5. THE MEANS AND INSTITUTIONS NEEDED TO FOSTER SPIRITUAL AND INTELLECTUAL LIFE

The bishop's responsibility as a priest begins even before the relationship of incardination is established, that is, during the period of preparation for ordination (c. 259). In this important period of formation, every effort must be made to ensure that the candidate for the priesthood demonstrates the proper qualities necessary for the exercise of the ministry. The bishop, assisted by moderators, should make sure of the mental and personality condition of the candidate, but also admit to the priesthood men with the right level of empathy, sensitive to the harm of others, especially minors. These are qualities indispensable in the ministry of every pastor⁸⁰. The clerics, even after being ordained, are obliged to continue their formation and training in the doctrine «founded in sacred scripture, handed on by their predecessors, and commonly accepted by the Church, as set out especially in the documents of councils and of the Roman Pontiffs» (c. 279 §1). Already, the Second Vatican Council has pointed out that «since human culture and also sacred science has progressed in our times, priests are urged to suitably and without interruption perfect their knowledge

⁷⁹ Cf. Second Vatican Council. "Decree on the ministry and life of priests *Presbyterorum ordinis* (7-XII-1965)", 20-21. *Acta Apostolicae Sedis* 58 (1966): 1021-1022.

⁸⁰ Cf. John Paul II. "Post-Synodal Apostolic Exhortation *Pastores dabo vobis* (25-III-1992)", 43. *Acta Apostolicae Sedis* 84 (1992): 731-732; see more Robert Geisinger. *On the requirement of sufficient maturity for candidates to the presbyterate (c. 1031 §1), with a consideration of canonical maturity and matrimonial jurisprudence (1989-1990)*. Roma: Editrice Pontificia Università Gregoriana, 1999.

of divine things and human affairs and so prepare themselves to enter more opportunely into conversation with their contemporaries»⁸¹. In the search for appropriate means and institutions needed to foster spiritual and intellectual life for punished presbyters, it is necessary to consider human culture in our times and progress in the knowledge of divine things and human affairs.

Contemporary culture has been hurt by scandals related to the abuse of minors by clergy. Sacred and secular sciences are trying to respond to this sad phenomenon. Based on c. 384 and c. 279 §3⁸², we maintain that presbyters punished for the delict *contra sextum cum minore*, especially when their ministry is limited, should participate in spiritual and intellectual formation according to a programme prepared especially for them. Experts from various scientific disciplines studying the issue of the protection of minors in the Church and other communities should participate in the preparation of the programme. According to c. 279 §2, such norms should be developed at the level of particular law, in our opinion preferably in the territory belonging to the same Episcopal Conference. It is already a standard that the theme of abuse and protection of minors is considered in the formation of all priests. However, the bishop should do everything to prevent unjustified stigmatization of anyone.

Although the above postulate may be associated with the Socratic idea of showing the source of evil in ignorance, it is nevertheless of a legal nature as a proposal to fulfil the norm contained in c. 384, obliging the bishop to guarantee means and institutions needed to foster the spiritual and intellectual life to a presbyter who has found himself in a situation of conviction for the offence of great social resonance, which is difficult for him and for the community of the Church. The bishop responsible for it must respond to the voice calling for help in returning to life in the community and to other voices from within the community. In our opinion, the legislator follows the idea fixed in the doctrine of the Church, which takes knowledge into account as an essential factor of good conduct, although of course not the only one. Pope John Paul II,

⁸¹ *Presbyterorum ordinis*, 19.

⁸² C. 279 §3: «They are also to acquire knowledge of other sciences, especially of those which are connected with the sacred sciences, particularly insofar as such knowledge contributes to the exercise of pastoral ministry».

in post-synodal apostolic exhortation *Pastores dabo vobis*, justified the need for the intellectual formation of priests, citing «pastoral reasons»⁸³. The Holy Father saw the need to study the positive or descriptive human sciences because they «can help the future priest prolong the living “contemporaneity” of Christ». In this way, Christ became contemporary to the men and women of his time and spoke their language⁸⁴, which in turn is required of the Church in modern times, marked by the suffering of many innocents. Undertaking an honest and well-prepared formation will help the punished presbyter to better understand his own situation, as well as to find his place in the Church in times of crisis caused by sexual abuse.

6. CONCLUSIONS

From the moral point of view, responsibility can be understood as a response given to someone or in connection with something: to the voice of God, the moral law, the duty resulting from values, the voice of conscience, or in the most human dimension, to the voice of another person crying out for help. In the juridical sense, responsibility is a response to a juridical duty, and c. 384 obliges bishops to take special solicitude of a presbyter incardinated in his particular Church. This duty becomes even more urgent in the case of a presbyter punished for the delict *contra sextum minorem* who remains in the clerical state, for the sake of the good of the Church, understood as the protection of minors and the spiritual good of the cleric who committed the offence.

In canonical literature, one can find claims that the imposition and service of penalty results in juridical regeneration, which consequently enables the subject to reintegrate socially. It should be noted, however, that in the case of offences that are particularly seriously detrimental to the personal dignity of the youngest, which are the cause of a global and long-lasting scandal, it is not possible to regenerate legally once the penalty has ceased. The reason for this is the difficulty in implementing and achieving social reintegration. The presbyter, as an active collaborator of the bishop, assumes co-responsibility for the People of God, which entails

⁸³ *Pastores dabo vobis*, 51.

⁸⁴ *Ibid.*, 52.

the duty of pastoral ministry. It is effective and safe if the superior has evaluated his capacity for this ministry with the faithful characterized by the quality of age. It should apply administrative measures: (1) in cases of improper and imprudent conduct, (2) to protect the common good, (3) to avoid scandal. The occurrence of the first premise should be recognized by the superior with the help of experts, the other two occur by the mere fact of committing the delict, and since they occur, administrative measures should be applied for a determined period until the premises subside. The prohibition of pastoral ministry with minors should be imposed whenever the good of the Church so requires, that is, in the first place, when the safety of minors is threatened, which in the case of diagnosing disorders of sexual preference means imposing such a prohibition permanently. The observance of c. 384 towards the punished presbyter is an extension of the juridical regeneration aimed at social reintegration. The guarantee of the subjective rights of the priest who has been punished must not jeopardise the rights of minors: to life, dignity, and liberty.

It would be advisable to consider the issuance by the Holy See of an instruction which, in accordance with c. 34 §1, as a normative act of the executive power, would clarify the prescriptions of the laws and determine the reasons to be considered in their observance, in the matter of the bishop's solicitude for the presbyter punished for the delict *contra sextum minore*. This would be an important step towards the protection of minors. The instruction, as a legal instrument, has proved its worth in situations of crisis of the Church and the fight against abuse.

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