

**DISMISSAL OF A MEMBER FROM A RELIGIOUS INSTITUTE
ACCORDING TO THE *CCEO*
AND ITS APPLICATION TO THE BASILIAN ORDER OF SAINT JOSAPHAT
IN THE UKRAINIAN GREEK-CATHOLIC CHURCH IN CANADA**

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Thesis submitted to the Saint Paul University
in partial Fulfillment of the requirements for the
Degree of Doctor of Canon Law

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ABSTRACT

This study explores and analyzes the substantive law of the *CCEO* and the proper law of the Apostolic See as it pertains to the extra-judicial and penal judicial processes. The study investigates when a member belonging to a religious institute, i.e., monasteries, orders and congregations of pontifical right, patriarchal and/or eparchial right commits offenses, crimes or delicts, including the *graviora delicta* reserved to the DDF, which could result in a dismissal of a member from their respective religious institute. Moreover, this study is focused on the application of norms of canon law to the dismissal of religious members from the Basilian Order of Saint Josaphat, which is a male clerical Order of a pontifical right in the Byzantine tradition in Canada following the *Rules: The Basilian Order of Saint Josaphat*. This study determines the competent authority or proper tribunal, which has the competence to dismiss a guilty member from a religious institute, as well as attempting to demonstrate the cooperation between hierarch and major superiors in the dismissal process. A major superior bears the responsibility of using discretion in the application of executive power. This responsibility is to be enforced with justice, equity and charity deemed to be appropriate for the circumstances of the case of an individual who may be dismissed. The uniqueness of the Eastern Code ensures that any case of dismissal of a member from a religious institute may be considered judicially. This study describes the structure of a religious tribunal, and it provides the challenge for the Basilian Order to establish a tribunal and establish the appropriate statutes for the tribunal.

RÉSUMÉ

Cette étude explore et analyse le droit substantiel du *CCEO* et le droit propre du Siège apostolique en ce qui concerne les procédures extrajudiciaires et pénales. Cette thèse examine dans quels cas membre d'un institut religieux – c'est-à-dire les monastères, les ordres et les congrégations de droit pontifical, patriarcal et/ou éparchial – commet des infractions, des crimes ou des délits, y compris les *graviora delicta* réservés au DDF, sur le renvoi d'un membre de l'institut religieux respectif. En outre, cette étude se concentre sur l'application des normes du droit commun sur le renvoi des membres religieux de l'Ordre basilien de Saint-Josaphat, en tant qu'ordre clérical masculin de droit pontifical dans la tradition byzantine au Canada, conformément aux *Règles : L'Ordre basilien de Saint-Josaphat*. Cette étude détermine l'autorité compétente, le tribunal approprié, qui a le pouvoir de renvoyer un membre coupable de l'institut religieux, et elle démontre la coopération entre la hiérarchie et les supérieurs majeurs dans le cadre du processus de renvoi. Un supérieur majeur a la responsabilité d'exercer son pouvoir exécutif de manière discrétionnaire. Cette responsabilité doit être exercée avec justice, équité et charité, ce qui est jugé approprié compte tenu des circonstances du cas d'une personne qui a été renvoyée. La particularité du code oriental garantit que tout cas d'un renvoi d'un membre de l'institut religieux peut être examiné par un procès judiciaire. Cette étude décrit la structure d'un tribunal religieux et présente le défi que représente pour l'ordre basilien la création d'un tribunal et l'établissement de ses statuts.

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ACKNOWLEDGMENTS

I thank God with profound gratitude for the grace of life, a religious vocation and the grace of priesthood, for the gift of studying at Saint Paul University in Ottawa and acquiring the knowledge of canon law to serve the people of God.

I express my gratitude to my former provincial superior, the Very Reverend Gabriel Haber, OSBM, and his Council, who allowed me to pursue my studies, and the successive superior generals, the Very Reverend Geonesio Viomar, OSBM and the Very Reverend Robert Lisseiko, OSBM, who encouraged and supported me throughout my studies. I am grateful to all my brothers in the Basilian Order who helped, supported and inspired me to work hard through all my studies, who arranged the necessary literature for me, especially from Roman Institutes, without whom I would not have been able to acquire this valuable education. Special thanks to those who helped in proof-reading this thesis.

I express my gratitude to the successive Deans of the Faculty of Canon Law, Dr. Anne Asselin, Monsignor John Renken and Dr. Chad Glendinning, who were always generous with their time and encouragement and guided me in the right direction of writing the thesis for which I am deeply appreciative. Thank you to all members of the Faculty of Canon Law who provided me with an exceptional canonical formation and conveyed a love for the study of the law. And I am especially indebted to the late professor Francis Morrisey, OMI who, through his lectures, unintentionally encouraged me to pursue the advanced degree and to choose just such a topic for my thesis. Thank you to my thesis supervisor, Dr. Michael Nobel, who provided me with a model of commitment to both scholarship and elegance in writing and the discipline of deadlines. I am very grateful to him for his support and dedication to the progress of this project. His extraordinary

professionalism, careful attention to detail, kept everything in order and moving forward. My sincere gratitude also goes to the administrative staff of the Faculty of Canon Law, as well as the library staff of Saint Paul University, especially, Marta Samokishyn, for their availability, assistance, friendliness, encouragement and moral support during my studies at Saint Paul University; people who always are willing to serve, and to serve for something higher, for good.

Finally, I wish to express my heartfelt thanks as the completion of this project would not have been possible without the gratuitous support, encouragement and patience of friends and especially family, my late mother who was not satisfied that I could not visit her so often, but who always believed in me and my ability to finish the thesis. And I wish to express my thanks to all that I am not able to mention by name, I thank you so much. May God's blessing be abundant upon you.

τῷ δὲ βασιλεῖ τῶν αἰώνων, ἀφθάρτῳ, ἀοράτῳ, μόνῳ θεῷ, τιμὴ καὶ δόξα εἰς τοὺς
αἰῶνας τῶν αἰώνων· ἀμήν.

ABBREVIATIONS

<i>AAS</i>	<i>Acta Apostolicæ Sedis, Commentarium officiale</i>
art(s).	article(s)
<i>ASS</i>	<i>Acta Sanctæ Sedis</i>
c. / cc.	canon / canons
CCCCB	Canadian Conference of Catholic Bishops
<i>CCEO</i>	<i>Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus</i>
<i>CCLA</i>	J.I. ARRIETA (ed.), <i>Code of Canon Law Annotated</i>
CCLS	CANADIAN CANON LAW SOCIETY
CDF	Congregation for the Doctrine of the Faith
<i>CIC</i>	<i>Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus</i>
<i>CLD</i>	<i>Canon Law Digest</i>
CLSA	Canon Law Society of America
<i>CLSA Comm</i>	J.P. BEAL, J.A. CORIDEN, and T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i>
CLSGBI	Canon Law Society of Great Britain and Ireland
<i>CLSGBI Comm</i>	G. SHEEHY et al. (eds.), <i>The Canon Law: Letter & Spirit</i>
col.	column
DDF	Dicastery for the Doctrine of the Faith
<i>Exegetical Comm</i>	A. MARZOA, J. MIRAS, R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English translation), <i>Exegetical Commentary on the Code of Canon Law</i>
<i>FLANNERY</i>	A. FLANNERY (gen. ed.), <i>Vatican Council II: The Conciliar and Post-Conciliar Documents</i>

<i>Ius</i>	<i>Iustitia</i>
<i>J</i>	<i>The Jurist</i>
<i>LG</i>	SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church <i>Lumen gentium</i>
<i>2010 Normae</i>	CONGREGATION FOR THE DOCTRINE OF THE FAITH, <i>Normae de gravioribus delictis</i> , 2010
<i>2021 Normae</i>	CONGREGATION FOR THE DOCTRINE OF THE FAITH, <i>Normae de delictis Congregationi pro doctrina fidei reservatis</i> , 2021
no(s).	number(s)
<i>OSBM</i>	<i>Ordo Sancti Basilii Magni</i>
<i>PC</i>	SECOND VATICAN COUNCIL, Decree on the Up-to-date Renewal of Religious Life <i>Perfectae caritatis</i>
<i>PI</i>	CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETY OF APOSTOLIC LIFE, Directives on Formation in Religious Institutes <i>Potissimum institutioni</i>
<i>PE</i>	FRANCIS, Apostolic Constitution on the Roman Curia and Its Service to the Church in the World <i>Praedicate Evangelium</i>
<i>Per</i>	<i>Periodica</i>
<i>PINTO, Commento CCEO</i>	P.V. PINTO (ed.), <i>Commento al Codice dei Canoni delle Chiese Orientali</i>
<i>Practical Comm</i>	J.D. FARIS and J. ABBASS (eds.), <i>A Practical Commentary to the Code of Canons of the Eastern Churches</i>
<i>RENKEN, Substantive Law</i>	J.A. RENKEN, <i>The Penal Law of the Roman Catholic Church: Substantive Law</i>
<i>RfR</i>	<i>Review for Religious</i>
<i>SST</i>	<i>Sacramentorum sanctitatis tutela</i>
<i>StC</i>	<i>Studia canonica</i>

<i>UR</i>	SECOND VATICAN COUNCIL, Decree on Ecumenism <i>Unitatis redintegratio</i>
<i>VC</i>	JOHN PAUL II, Post-Synodal Apostolic Exhortation on the Consecrated Life and Its Mission in the Church and in the World <i>Vita consecrata</i>
vol(s).	volume(s)
<i>VP</i>	FRANCIS, Apostolic Letter <i>motu proprio</i> by which Some Canons of Title XXVII and Canon 1152 of the Code of Canons of the Eastern Churches Are Changed <i>Vocare peccatores</i>
WOESTMAN, <i>Allocutions</i>	W.H. WOESTMAN (ed.), <i>Papal Allocutions to the Roman Rota 1939-2011</i>

GENERAL INTRODUCTION

“Consecrated life is born and reborn of an encounter with Jesus as he is: poor, chaste and obedient.”¹

The *Codex canonum Ecclesiarum orientalium* (=CCEO) deals with the consecrated life in Title XII: ‘Monks and Other Religious as well as Members of Other Institutes of Consecrated Life.’ The Eastern Code defines this as life lived in a separate state;² “a stable manner of living in common in an institute approved by the Church.”³ This occurs through the profession of the evangelical counsels of obedience, chastity and poverty, which are observed according to the particular law⁴ of each institute. It is a life totally dedicated to the service of the Kingdom of God, to the flourishing of the Church and to the salvation of the world.⁵ The Christian faithful who dedicate themselves to consecrated life, “renounce the world.”⁶ Members must fully comprehend the spiritual patrimony of their institute, which includes: the mindset and the intent of the founder, and the nature, purpose, spirit, character and sound traditions which exist therein.

¹ FRANCIS, Homily, Vatican Basilica, 2 February 2018, English translation https://www.vatican.va/content/francesco/en/homilies/2018/documents/papa-francesco_20180202_omelia-vita-consacrata.html (12 November 2025).

² See *Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus*, Libreria editrice Vaticana, 1995, English translation *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, second printing, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 2024, canon 399. All references to the canons of the 1990 Code will be styled “CCEO, c.” for canon and “CCEO, cc.” for canons, followed by the canon number(s).

³ CCEO, c. 410.

⁴ “[...] under the name “particular law” (*ius particulare*) come all laws (*leges*), legitimate customs, statutes, and other norms of law (*ius*) which are common neither to the entire Church nor to all the Eastern Churches” (CCEO, c. 1493, §2).

⁵ See CCEO, c. 410; see also SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen gentium*, 21 November 1964 (=LG), nos. 43-45, in *AAS*, 57 (1965), 49-52, English translation in *FLANNERY*, 402-406; cf. J.F. GALLEN, “Constitutions and Directory,” in *R/R*, 40 (1981), 763-764.

⁶ CCEO, c. 410.

The most heart-breaking moment in the life of a religious member might occur when they are dismissed from the institute. This difficult moment is the result of a situation wherein a member of a religious institute, forsaking God's commandment against the profession of the evangelical counsels, e.g., violating his or her vow to chastity by engaging in sexual misconduct or forming a romantic relationship, demonstrates a neglect of the obligation to "show the fatherly face of God and the motherly face of the Church, as do people who spend their lives so that others can have life and hope."⁷ This is unquestionably inappropriate to a vocation of consecrated life.

Dismissal is the conclusive release of a member from a religious institute as a result of sanctioning imposed at the initiative of the competent ecclesiastical authority, even to the extent of determining the release against the will of the religious member.⁸ The Eastern Code provides norms, namely canons 497-503, which pertain to the dismissal of members for delicts that occurred in monasteries, orders and congregations, which are referred to in canons 551-553. The *CCEO* defines the discipline for the administration of *ipso iure* dismissal and/or facultative dismissal. According to the Eastern legislation, a member can be dismissed from the religious institute whether by extra-judicial decree, or by a judicial process.

Pope Francis, by promulgating the motu proprio *Vocare peccatores* (=VP), dated March 20, 2023, revised the norms on penal sanctions in the Church, in such a way, as to

⁷ JOHN PAUL II, Post-Synodal Apostolic Exhortation on the Consecrated Life and Its Mission in the Church and in the World *Vita consecrata*, 25 March 1996 (=VC), no. 105, in *AAS*, 88 (1996), 481, English translation in *Origins*, 25 (1995-1996), 716.

⁸ See J. TORRES, "La dimissione dei religiosi: Un percorso storico che mostra l'interesse pastorale della Chiesa," in *Per*, 97 (2008), 283.

adapt the tools of government to pastoral demands.⁹ With the help of this *motu proprio*, Eastern penal discipline is more expedient and effective in the face of the contemporary needs of the Eastern Catholic Churches, as well as universal discipline.¹⁰ It is the first time the norms state that when a cleric commits a delict against chastity or participates in viewing pornography with a minor or a person who habitually lacks the use of reason, or who the law recognizes as having the right to legal protection, such a cleric is to be punished with removal from office and other appropriate penalties, not excluding removal from the clerical state if the case so warrants. If the case involves a religious, non-cleric who has professed publicly the perpetual vows of chastity, he or she is subject to an ecclesiastical penalty.¹¹ *CCEO*, canon 1453 does not determine the penalty and it does not specify that the delict must cause a scandal; however, if the religious cleric is removed from the clerical state, this canon does not exclude the provision that a religious member can be dismissed from the religious state.

It is essential to draw a distinction, at least one, that is logical and conceptual. This distinction must be made between a dismissal process and the penal process that defines the conduct committed by a member as a delict. In practice, this distinction may become obscured when, according to ecclesiastical law, the criminal action could take place within the religious institute. This refers to the series of actions taken by the authority (secret

⁹ “instrumenta regiminis postulatis pastoralibus aptandi” (FRANCIS, Apostolic Letter *motu proprio* by which Some Canons of Title XXVII and Canon 1152 of the Code of Canons of the Eastern Churches Are Changed *Vocare peccatores*, 20 March 2023 (=VP), in *AAS*, 115 (2023), 384, in *Communicationes*, 55 (2023), 36.

¹⁰ “quarum ope disciplina poenalis orientalis aptior efficaciorque sit coram hodiernis Ecclesiarum catholicarum orientalium necessitatibus, necnon disciplinae universali congruens” (VP, in *AAS*, 115 (2023), 384, in *Communicationes*, 55 (2023), 36-37).

¹¹ The revised norms, issued by Pope Francis in VP, contains new norms which pertain to *graviora delicta*, now are higher law (*ius*) of the Eastern Code. See *CCEO*, c. 1453, §§6-7.

ballot, the decision to dismiss a member made by the competent superior after obtaining the consent of the council, after thoroughly considering the reasons, evidence, and defenses previously collected by the immediate major superior of the accused member) that ecclesiastical law stipulates for imposing or declaring a penalty, which arises from the delict.¹²

This study provides an original thesis which evolved from the exploration of the dismissal of members from religious institutes due to a crime, an offence, or a delict committed in light of the application of the new norms issued by the Apostolic See. Furthermore, this thesis also examines *Sacramentorum sanctitatis tutela* (=SST),¹³ and *Vos estis lux mundi* (=VELM),¹⁴ as they pertain to members who commit a delict against chastity with a minor, or those who habitually have an imperfect use of reason, or who have protection under the law.

The study is limited to the dismissal of members from religious institutes, according to the *CCEO*, with a focus on the application of the norms for dismissal of religious members from the Basilian Order of Saint Josaphat as found in the *Rules: The Basilian Order of Saint Josaphat* (=ROSBM). A major superior bears the responsibility to administer the discretionary use of executive power, e.g., issuing required warnings required by

¹² See J.L. SÁNCHEZ-GIRÓN RENEDO, “La expulsión de un instituto religioso en los cánones 694-700 a la luz de la normativa del CIC en materia penal,” in *Estudios eclesiásticos*, 88 (2013), 711.

¹³ JOHN PAUL II, Apostolic Letter motu proprio *Sacramentorum sanctitatis tutela*, 30 April 2001, in *AAS*, 93 (2001), 737-739, English translation in W.H. WOESTMAN, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, 2nd ed. rev. and updated, Ottawa, Faculty of Canon Law, Saint Paul University, 2003, 300-302.

¹⁴ FRANCIS, Apostolic Letter motu proprio *Instituting New Procedures for the Preliminary Investigation of Allegations of the Sexual Abuse of Minors or Other Vulnerable Persons Involving Prelates Vos estis lux mundi*, 25 March 2023 (=VELM 2023), in *AAS*, 115 (2023), 394-404, English translation in RENKEN, *Substantive Law*, 659-668.

CCEO, canon 500, §2, 2^o in order to evaluate whether the member has reformed. This power is to be enforced with justice, equity and charity as deemed to be appropriate in the case of an individual who could be dismissed.¹⁵ This study endeavours to determine the competent and proper authority to be observed from the initiation of the process of dismissal to its conclusion. It also demonstrates the cooperation between hierarchs and major superiors. The intention of this thesis is to give prominence to the norms of dismissal of a member from the religious institute with particular reference to, and based upon, the existence of provisions in the *CCEO* in comparison with distinct provisions in the *CIC* and the relevant provisions found in the proper law of the Apostolic See. This thesis also highlights the complexity of the norms of the *CCEO* regarding dismissal of a member from the religious institute.

At present, there exists a limited amount of comprehensive literature on the dismissal of a religious from the institutes according the *CCEO*. This thesis aims to provide a well-informed and detailed analysis of the dismissal of a member from a religious institute. Several important documents which relate to the examination of the canons of the *CCEO* on consecrated life do exist,¹⁶ as well as many articles which examine specific parts of consecrated life derived from both codes, i.e., *CCEO* and *CIC*,¹⁷ including the process of

¹⁵ See R.M. McDERMOTT, "Equity and Charity to Separated Members," in *CLSGBI Newsletter*, June 1991, 30.

¹⁶ See J. ABBASS, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes*, Ottawa, Faculty of Canon Law, Saint Paul University, 2008; D. SALACHAS, *La vita consacrata nel Codice dei Canonici delle Chiese Orientali (CCEO)*, Bologna, Edizioni Dehoniane Bologna, 2006; V. KOLUTHARA, *Rightful Autonomy of Religious Institutes: A Comparative Study Based on the Code of Canons of the Oriental Churches and the Code of Canon Law*, Rome and Bangalore, Centre for Indian and Inter-Religious Studies and Dharmaram Publications, 1994; C. PUJOL, *La vita religiosa orientale. Commento al Codice del Diritto Canonico Orientale (Canonici 410-572)*, Rome, Pontificio Istituto Orientale, 1994.

¹⁷ See J. ABBASS, "Revising the Eastern Canons on the Consecrated Life," in *Ius*, vol. 3, no. 1 (June 2012), 99-123; J. ABBASS, "Admission to Orders and Congregations and the Novitiate," in ID., *Two Codes in Comparison*, 3rd ed., Kanonika, no. 7, Rome, Edizioni Orientalia Christiana, 2018, 57-90; D.-M. A.

dismissal.¹⁸ This study is unique in its scope and analysis, since it focuses primarily on the substantive law as it pertains to the extra-judicial and a judicial process for dismissal of a member from religious institutes according to Eastern law, especially in light of changes recently made by the legislator.

This study consists of four chapters. Chapter One examines the canonical norms applicable to the religious institutes of consecrated life. It begins with a rigorous examination of the religious state included in the *CCEO*, especially the institutional forms of consecrated life, such as monasteries, orders and congregations. It also focusses on the dependence of various institutes on ecclesiastical authority, since institutes can be of pontifical, patriarchal or eparchial right. It continues with a presentation of the establishment of the Eastern religious institutes, and highlights the difference between canon law¹⁹ and the new norms of the *motu proprio Ab initio*. This chapter provides an overview of the structures of institutes, their higher authority and their dependence on the hierarchs of the Church. Finally, it describes religious stages and the systematic formation of a member, which starts from postulancy and continues through various stages including novitiate, the period of temporary profession and perpetual profession.

JAEGER, "Observations on Religious in the Oriental Code," in J. CHIRAMEL et al. (eds.), *The Code of Canons of the Eastern Churches: A Study and Interpretation*, Alwaye, India, St. Thomas Academy for Research, 1992, 152-180.

¹⁸ See J. ABBASS, "Departure from Religious Institutes in the Latin and Eastern Catholic Churches," in *StC*, 32 (1998), 97-128; J. SIEDLECKI, "Bezstronność w postępowaniu karnym wobec zakonnika, który popełnił przestępstwo przeciw szóstemu przykazaniu (kan. 695 §1; 1395 §2) [Impartiality in the Penal Process Concerning Religious Who Committed an Offence against the Sixth Commandment (can. 695 §1; 1395 §2)]," in *Kościół i prawo*, 3 (2014), 57-86; D. BOREK, "La dimissione dei religiosi a norma del can. 694 del Codex del 1983: e una pena espiatoria latae sententiae?" in *Commentarium pro religiosis et missionariis*, 81 (2000), 67-95; TORRES, "La dimissione dei religiosi," 283-324.

¹⁹ "Under the name "common law" (*ius commune*) in this Code come, besides the laws (*leges*) and legitimate customs of the entire Church, also the laws (*leges*) and legitimate customs common to all the Eastern Churches" (*CCEO*, c. 1493, §1).

In this thesis, the term *canon law* is employed to avoid any confusion.

Chapter Two outlines the substantive law which pertains to the extra-judicial process and its requirements for dismissal of a religious member. The chapter highlights various cases of dismissal of members from varying religious institutes, such as an *ipso iure* dismissal, a discretionary dismissal, an expulsion of a member from the institute which can subsequently proceed to a dismissal from the religious institute, and the return of the member to the lay state. In addition, it addresses the circumstances pertaining to the case where a religious cleric who commits *graviora delicta*, as outlined in the *CCEO* and in the proper law of the Apostolic See, may lead to a dismissal from consecrated life. This chapter includes an examination of the norms which refer specifically to the ecclesiastical authority, which bears the power to dismiss the religious from the institute, as well as the effects of a lawful dismissal from the religious institute of a member.

Chapter Three explores the substantive law, which pertains to a judicial process for dismissal of a member from the religious institute. In the case of a member who is dismissed from the religious institute by an extra-judicial process, he or she can request that the case be handled judicially in a higher instance. The chapter gives careful consideration to competency, to the requirements of tribunal personnel and to the authority of the individuals rendering the proper decision. Furthermore, it outlines cases which are to be handled judicially, and describes the tribunal and the judge who is competent to adjudicate an accused religious member. In this context, the term *tribunal* is not to be understood primarily as a physical structure, but rather as the competent authority constituted in accordance with law, namely the judge or judges, together with the notary and, where applicable, the promoter of justice.

Chapter Four focuses on the application of the proper procedure in such cases. This chapter also outlines differences between the *CCEO* and the *ROSBM* pertaining to dismissal of members from the Basilian Order of Saint Josaphat in Canada. The chapter outlines the proper order of an extra-judicial dismissal from the Order according to the *ROSBM*; *ipso iure* dismissal, a dismissal by decree of a member with temporary or perpetual profession. It highlights the expulsion of a professed member from a religious house, and if the case warrants, followed by the dismissal of the member. The chapter also explores the stipulation of the right, of a member to be dismissed from the Order, to ask for a judicial process. It continues by providing a discussion on the norms issued by the Canadian Conference of Catholic Bishops (=CCCB) regarding *graviora delicta* reserved to the Dicastery for the Doctrine of the Faith (=DDF), together with the protocol to be followed in a case of allegation of sexual misconduct involving a member of the Basilian Order in Canada. The chapter concludes with an explanation of the legal effects of a lawful dismissal, the means of support the Basilian Order shall provide to dismissed members and the assurance of justice and equity in accordance with circumstances of the life of the individual involved.

CHAPTER ONE: NORMS ON RELIGIOUS INSTITUTES OF CONSECRATED LIFE

Introduction

Institutes of consecrated life occupy a place of great importance in the Church. In his first letter to the Thessalonians, Saint Paul recalls, “[f]or this is the will of God, your sanctification” (1 Thessalonians 4:3).¹ The main vocation of each Christian is the sanctification of life through the work of the Holy Spirit,² who grants various gifts to those in secular life, the priesthood or consecrated life.³

The consecrated life is a vocation through which an individual more closely follows and imitates the teaching and example of Jesus Christ,⁴ which, “provide[s] the foundation of the evangelical counsels of chaste self-dedication to God, of poverty and of obedience.”⁵ The evangelical counsels are, “a gift of God which the Church has received from her Lord and which by His grace she always safeguards.”⁶ It is a vocation in which an individual totally dedicates himself or herself to the acquisition of perfect charity⁷ – the image of the

¹ In this thesis, all quotations from the Bible are from the Revised Standard Version, *The Holy Bible*, 2nd Catholic Edition, prepared by the CATHOLIC BIBLICAL ASSOCIATION OF GREAT BRITAIN, San Francisco, CA, Ignatius Press, 2006.

² See N.A. BAUER, “The State of Consecrated Life: *Vita et Sanctitas Ecclesiae*,” in *J*, 75 (2015), 106; see also S.J. BOSCO, “Typology of the “Institutes of Consecrated Life” (ICL) and “Society of Apostolic Life” (SAL) in *CIC* and *CCEO*,” in *Ius*, vol. 5, no. 1 (June 2014), 94.

³ See M. TRESA, “The Notion of *Consecration* and *Profession* in the Monastic Profession and Profession in Orders and Congregations according to *CCEO* – Part I,” in *Ius*, vol. 10, no. 2 (June 2019), 94.

⁴ See PAUL VI, Apostolic Exhortation on the Renewal of the Religious Life *Evangelica testificatio*, 29 June 1971, no. 4, in *AAS*, 63 (1971), 499, English translation in *CLD*, vol. 7, 427.

⁵ *LG*, no. 43, in *AAS*, 57 (1965), 49, *FLANNERY*, 402.

⁶ *Ibid.*

⁷ “The judgment of the *ecclesiastical magisterium* by which the institute is recognized not only as a public person in the Church but also as an evangelical presence, as a gift of the Spirit, as the following of Christ, capable of leading the Christian faithful who enter it toward the perfection of charity” (J. TORRES,

nature of God, to building the Mystical Body of Christ, His Church and the salvation of the world.⁸ The consecrated member evolves, “as a sign of the foretelling of heavenly glory,”⁹ which has its eschatological character in the proclamation of the Kingdom of God.

This initial chapter is focused primarily on the documents of the Church and addresses the position of the institutes of consecrated life within ecclesial structure. This chapter includes an examination of the canonical norms pertaining to the institutes of consecrated life, i.e., monasteries, orders and congregations, referred to *CCEO*, canons 410-553. It has four sections: Religious State, Erection of Religious Institutes, Organizational Structures of Religious Institutes, and Stages of Consecrated Life and Formation.

1.1 — Religious State

The dualistic concept of enrollment in the Church established by Gratian: “[t]here are two kinds of Christians,”¹⁰ clerics and lay persons,¹¹ is still explicitly recognized in the

“Ecclesiastical Approval of Constitutions – Meaning and Scope,” in *Consecrated Life*, vol. 9, no. 1 (1984), 125).

⁸ Cf. R.M. McDERMOTT, “External and Internal Reconfiguration of Religious Institutes (Canons 582 and 581 CIC),” in *Commentarium pro religiosi et missionariis*, 86 (2005), 60.

⁹ *CCEO*, c. 410.

¹⁰ D.J. OSHEIM, “Conversion, *Conversi*, and the Christian Life in Late Medieval Tuscany,” in *Speculum*, vol. 58, no. 2 (1983), 368; “*duo sunt genera christianorum*” (C. 12, q. 1, c. 7).

¹¹ “By divine institution, there are among the Christian faithful in the Church sacred ministers who in law are also called clerics; the other members of the Christian faithful are called lay persons” (*Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Libreria editrice Vaticana, 1989, English translation *Code of Canon Law: Latin-English Edition, New English Translation*, fourth printing, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 2023, canon 207, §1. All references to the canons of the 1983 Code will be styled “CIC, c.” for canon and “CIC, cc.” for canons, followed by the canon number(s)).

Latin Church.¹² *CIC*, canon 588, §1 in describing the consecrated life in the Latin Church recognizes: “[b]y its very nature, the state of consecrated life is neither clerical nor lay.” The Latin code highlights that both the clergy and laity “inspired by the Holy Spirit are drawn to a special charism,”¹³ “consecrated to God in their own special way and contribute to the salvific mission of the Church; although their state does not belong to the hierarchical structure of the Church, it nevertheless belongs to its life and holiness.”¹⁴

CCEO, canon 399 clearly demonstrates the distinction of three states of Christian faithful in the Eastern Churches:

By the designation “lay persons” in this Code are understood the Christian faithful whose proper and specific quality is secularity and who, living in the world, participate in the mission of the Church, but are not in sacred orders nor ascribed in the religious state.

The first state is lay persons – living in the world, that is, “the faithful who by Baptism are incorporated into Christ, are placed in the People of God.”¹⁵ The second state consists of those persons who are in sacred orders, “[t]hrough diaconal ordination, one is ascribed as a cleric to the eparchy for whose service he is ordained.”¹⁶ Finally, the third state consists of those who belong to the religious, “assumed by perpetual profession, which includes the three perpetual vows of obedience, chastity, and poverty.”¹⁷ It is a “consecration of the

¹² “By divine institution, there are among the Christian faithful in the Church sacred ministers who in law are also called clerics; the other members of the Christian faithful are called lay persons” (*CIC*, c. 207, §1).

¹³ R.M. McDERMOTT, “Norms Common to All Institutes of Consecrated Life [cc. 573-606],” in *CLSA Comm*, 756.

¹⁴ *CIC*, c. 207, §2.

¹⁵ *LG*, no. 31, in *AAS*, 57 (1965), 37, *FLANNERY*, 388.

¹⁶ *CCEO*, c. 358. “Priestly ministry shares in the fullness of the ministry entrusted by Christ to the apostles” (SECOND VATICAN COUNCIL, Decree on the Ministry and Life of Priest *Presbyterorum ordinis*, 7 December 1965, no. 10, in *AAS*, 58 (1966), 1007, English translation in *FLANNERY*, 882).

¹⁷ *CCEO*, c. 462, §1.

whole person in a total gift by which one's entire existence may become a continuous worship of God in charity."¹⁸

1.1.1 — Nature of Consecrated Life

The *CCEO*, following the long tradition of monasticism in the East¹⁹ and the teaching formulated during the Second Vatican Council,²⁰ describes the nature,²¹ purposes and promotion of the religious state within the universal Church. Religious institutes become a place of *koinonia*, a fellowship with God and with people in the bonds of unity which is cultivated and fostered by the community.²² As a result, church law guarantees the uniqueness of each religious institute.²³

In 1975, the study group of the *Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo* (=PCCICOR) *De Monachis ceterisque religiosis* formulated and accepted unanimously the first canon which describes the religious state in this way:²⁴

The religious state, particularly the monastic one, is a stable manner of life approved by the Church, by which the Christian faithful, by a new and special title through the public vows of obedience, chastity and poverty, observed in accord with the norms of the statutes under a legitimate superior, more closely following Christ, Teacher and Exemplar of Holiness, are

¹⁸ J. PATHIYAMOOLA, *The Nature of the Religious State in the Latin and Oriental Codes*, JCD thesis, Rome, Pontificium Institutum Orientale, 1992, 35.

¹⁹ See R.M. McDERMOTT, "Two Approaches to Consecrated Life: The Code of Canons of the Eastern Churches and the Code of Canon Law," in *StC*, 29 (1995), 195.

²⁰ See J.A. FARIS, "The Revision of Eastern Canon Law," in *CLSA Proceedings*, 50 (1988), 161.

²¹ "The word *nature* means the natural qualities of things, natural disposition and character of persons, and the order and constitution of the world in general. It can also mean an element, a substance, and an essence" (PATHIYAMOOLA, *The Nature of the Religious State*, 1).

²² See J. BERNARDIN, "Authenticity and Diversity in Consecrated Life," in *Origins*, 24 (1994-1995), 309; see also G. LESAGE, "Sacred Bonds in the Consecrated Life," in *The Way Supplement*, 37 (1980), 80.

²³ See SIBI, "Religious Community as Communion of Common Life in the Light of *CCEO* Culture," in *Ius*, vol. 2, no. 1 (June 2011), 166.

²⁴ See PATHIYAMOOLA, *The Nature of the Religious State*, 18.

consecrated to attain perfect charity in the service of the Kingdom of God for the building up of the Church and the salvation of the world.²⁵

The religious state, especially its monastic variant, is characterized by stability of life,²⁶ and must be approved by the Church. The individual who professes the public vows of obedience, chastity and poverty assumes the status of religious, which is distinct from clergy and from laity, but it is integrated into the *status Christifidelium* – in the one priesthood of Christ.²⁷ The goal is to more closely follow Christ for the service of the Kingdom of God, for the building up of the Church and the salvation of souls.²⁸

The current legislation describes the religious state in general terms and applies this to both monks of a monastery and to the religious of an order or congregation,²⁹ in line with the teaching of the Second Vatican Council.³⁰

The religious state is a stable manner of living in common in an institute approved by the Church, by which the Christian faithful, more closely following Christ, Teacher and Exemplar of Holiness, under the influence of the Holy Spirit, are consecrated by a new and special title through the public vows of obedience, chastity, and poverty, observed in accord with the norm of the statutes under a legitimate superior, renounce the world, and totally dedicate themselves to the attainment of perfect charity in the service of the Kingdom of God for the building up of the Church and the salvation of the world as a sign of the foretelling of heavenly glory.³¹

The religious state must be fostered and promoted by all.³²

²⁵ “Status religiosus, praesertim monasticus, est stabilis vivendi modus ab Ecclesia approbatus, quo Christifideles, novo ac peculiari titulo per vota publica oboedientiae, castitatis et paupertatis sub legitimo Superiore ad normam statutorum servanda, Christum, Magistrum et Exemplar sanctitatis, pressius sequentes, dediti sunt ad caritatis perfectionem assequendam in servitium Regni Dei pro Ecclesiae aedificatione et mundi salute” (*Nuntia*, 4 (1977), 5).

²⁶ See *LG*, no. 43, in *AAS*, 57 (1965), 49, *FLANNERY*, 402.

²⁷ See SALACHAS, *La vita consacrata*, 42-43.

²⁸ See PATHIYAMOOLA, *The Nature of the Religious State*, 18.

²⁹ The schema of 1979 titled *De Monachis, Religiosis ceterisque Insitutis vitae Consilia evengelica peragendae*, and of 1980 *De Monachis ceterisque Religiosis necnon de sodalibus aliorum Insitutorum vitae consecratae* places importance on monasteries, reaffirming their status as the traditional and foundational form of consecrated life within Eastern Catholic Churches. See *Nuntia*, 8 (1979), 36; see also *Nuntia*, 11 (1980), 15; see also MCDERMOTT, “Two Approaches to Consecrated Life,” 197.

³⁰ See SALACHAS, *La vita consacrata*, 41-42.

³¹ *CCEO*, c. 410; cf. *Nuntia*, 24-25 (1987), 78.

³² *CCEO*, c. 411; cf. *Nuntia*, 24-25 (1987), 78.

CCEO, canon 410, defining the religious state, integrates the constitutive, theological and spiritual elements of the religious state with juridical regulation and norms.³³ Following the Second Vatican Council, this canon reopens an approach to the discernment of holiness for a member of a religious institute: “[A]ll Christians in any state or walk of life are called to the fullness of Christian life and to the perfection of love,”³⁴ within a variety of possibilities:

The forms and tasks of life are many but holiness is one – that sanctity which is cultivated by all who act under God’s Spirit and, obeying the Father’s voice and adoring God the Father in spirit and in truth, follow Christ, poor, humble and cross-bearing, that they may deserve to be partakers of his glory.³⁵

Consecrated life assumes its own perfection,³⁶ to “consider yourselves dead to sin” (Romans 6:11). It is a life which is built on a special consecration deeply rooted in baptism,³⁷ a life in which members embrace consecrated life and understand it as a gift from the Holy Trinity.³⁸

A member of a religious institute is called to “perfect charity,”³⁹ which becomes one of the most relevant characteristics of consecrated life.⁴⁰ Through the profession of the evangelical counsels, the consecrated person perseveres in his or her pursuit of the twofold

³³ See SALACHAS, *La vita consacrata*, 42.

³⁴ *LG*, no. 40, in *AAS*, 57 (1965), 45, *FLANNERY*, 397.

³⁵ *LG*, no. 41, in *AAS*, 57 (1965), 45, *FLANNERY*, 398.

³⁶ See *LG*, no. 44, in *AAS*, 57 (1965), 50, *FLANNERY*, 403.

³⁷ See SECOND VATICAN COUNCIL, Decree on the Up-to-date Renewal of Religious Life *Perfectae caritatis*, 28 October 1965 (=PC), no. 5, in *AAS*, 58 (1966), 704, English translation in *FLANNERY*, 614.

³⁸ See *VC*, no. 21, in *AAS*, 88 (1996), 394-395, *Origins*, 25 (1995-1996), 688; see also CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETY OF APOSTOLIC LIFE, Instruction on the Service of Authority and Obedience *Faciem tuam, Domine, requiram*, 11 May 2008, no. 12, English translation https://www.vatican.va/roman_curia/congregations/ccsrlife/documents/rc_con_ccsrlife_doc_20080511_utorita-obbedienza_en.html (12 November 2025).

³⁹ *CCEO*, c. 410.

⁴⁰ See MCDERMOTT, “Two Approaches to Consecrated Life,” 199.

love of God and love of neighbour,⁴¹ in a manner which affirms the all-embracing character of the love of God.⁴² By demonstrating his or her obedience to God, the member demonstrates their sincere engagement in the dynamics of love of humanity.⁴³

In professing their vow of obedience,⁴⁴ members seek to obey the specific will of God as deemed by their superior (cf. Mark 9:35)⁴⁵ in accordance with the particular law of the institute.⁴⁶ In embracing the vow of chastity, they renounce, in themselves, the values of the full nature of carnal love. In other words, they transcend the sexual life of the body, as well as procreation and family, in order to strive toward personal sanctification (see Matthew 19:11), which is proper to religious, so as to have greater availability for the ministry.⁴⁷ In poverty, they submit themselves to the particular law of use of property, thus denying autonomous and free enjoyment of temporal goods.⁴⁸

⁴¹ See *VC*, no. 5, in *AAS*, 88 (1996), 380, *Origins*, 25 (1995-1996), 684.

⁴² Cf. SACRED CONGREGATION FOR RELIGIOUS AND FOR SECULAR INSTITUTES, *Essential Elements in the Church's Teaching on Religious Life as Applied to Institutes Dedicated to Works of the Apostolate*, 31 May 1983 (=CTRL), nos. 5-12, in *CLD*, vol. 10, 46-48.

⁴³ See PATHIYAMOOLA, *The Nature of the Religious State*, 36.

⁴⁴ "Obedience is the foundation of the consecrated life" (J. ABBASS "Monks and Other Religious as Well as Members of Other Institutes of Consecrated Life (cc. 410 - 572)," in G. RUYSSSEN (ed.), *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, 2nd ed., Kanonika, no. 10, Rome, Pontificio Istituto Orientale, 2020, 424); see *Nuntia*, 16 (1983), 85.

⁴⁵ See CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETY OF APOSTOLIC LIFE, *Faciem tuam, Domine, requiram*, no. 11, English translation https://www.vatican.va/roman_curia/congregations/ccsclife/documents/rc_con_ccsclife_doc_20080511_autorita-obbedienza_en.html (12 November 2025).

"The religious is pledged to obey the directives of lawful superiors according to the constitutions of the institute and further accepts a particular obedience to the Holy Father in virtue of the vow of obedience" (CTRL, no. 16, in *CLD*, vol. 10, 50).

⁴⁶ See *PC*, no. 14, in *AAS*, 58 (1966), 708, *FLANNERY*, 619.

⁴⁷ "He or she undertakes to live chastity by a new life, that of the vow, and to live it in consecrated celibacy for the sake of the kingdom. This implies a manner of life that is a convincing and credible witness to a total dedication to chastity and which foregoes any behavior, personal relationships and forms of recreation incompatible with this" (CTRL, no. 16, in *CLD*, vol. 10, 50).

⁴⁸ See GALLEN, "Constitutions and Directory," 765.

"The religious foregoes the free use and disposal of his or her property, depends through the lawful superior on the institute for the provision of material goods, puts gifts and all salaries in common on belonging

Subsequent to the Second Vatican Council, the legislator calls for supporting and promoting the religious state.⁴⁹

The venerable institution of monastic life must be carefully preserved and must shine forth increasingly in its true spirit in both East and West. Through long centuries it has deserved well of the Church and of human society. [...] There are religious orders which, from their rule or institution, unite the apostolic life with chorial office and monastic observances. These should adapt their way of life to the needs of their proper apostolate, at the same time loyally preserving their form of life, for it has been of considerable service to the Church.⁵⁰

The cultivation of religious vocations, as well as, the creation of an appropriate environment for their development and maturity, helps the Christian faithful to understand and recognize consecrated life as an essential element that builds the Church.⁵¹

1.1.2 — Religious Institutes of Consecrated Life

The *CCEO* recognizes three types of religious institutes,⁵² namely: monasteries, orders and congregations. Placing the focus on design and development,⁵³ the Eastern Code adheres to the divine gift of consecrated life embraced throughout the years in the history of the Church.⁵⁴ Therefore, the *CCEO* comprehensively deals with the norms of monastic

to the community, and accepts and contributes to a simple manner of life” (*CTRL*, no. 16, in *CLD*, vol. 10, 50).

⁴⁹ Cf. *CCEO*, c. 411.

⁵⁰ *PC*, no. 9, in *AAS*, 58 (1966), 706, *FLANNERY*, 616.

⁵¹ See *SALACHAS*, *La vita consacrata*, 50.

⁵² See G. NEDUNGATT, *The Spirit of the Eastern Code*, Rome, Centre for Indian and Inter-Religious Studies, Bangalore, Dharmaram Publications, 1993, 114.

⁵³ See J. KOCHUPURACKAL, *Religious Authority and Power in the Particular Law of the Little Flower Congregation*, JCD thesis, Rome, Pontificium Institutum Orientale, 1994, 74.

⁵⁴ See BERNARDIN, “Authenticity and Diversity in Consecrated Life,” 309.

institutes,⁵⁵ and the orders and congregations are defined in terms of their similarities and differences accredited to monastic institutes.⁵⁶

1.1.2.1 — Monastic Life

Monastic life has flourished in the East and West, greatly influencing consecrated life in its institutional form. The Second Vatican Council stated:

In the East are to be found the riches of those spiritual traditions which are given expression in monastic life especially. From the glorious times of the holy Fathers, the monastic spirituality flourished in the East which later flowed over into the Western world, and there provided a source from which Latin monastic life took its rise and has often drawn fresh vigor ever since. Therefore, it is earnestly recommended that Catholics avail themselves more often of the spiritual riches of the Eastern Fathers which lift up the whole man to the contemplation of divine mysteries.⁵⁷

Pope John Paul II highlights the importance of the Eastern monastic practices in the early Church:

Monasticism has always been the very soul of the Eastern churches: The first Christian monks were born in the East and the monastic life was an integral part of the Eastern *lumen* passed on to the West by the great fathers of the undivided church.⁵⁸

Eastern monasticism follows a historical path traversed by the divine gift of consecration.⁵⁹ Throughout history, the Eastern Churches witnessed the formation and development of monasticism from its historical roots.⁶⁰ Monastic life in the East in

⁵⁵ “This accent on monks and monasteries expresses more hope than present day reality reflects – a hope of the future flowering of monasticism or of the ecumenical reconciliation between the Orthodox and the Catholic Churches” (G. NEDUNGATT, “A New Code for the Oriental Churches,” in *Vidyajyoti Journal of Theological Reflection*, 55 (1991), 280).

⁵⁶ See PATHIYAMOOLA, *The Nature of the Religious State*, 32; see also M. TRESA, “The Notion of *Consecration* and *Profession* in the Monastic Profession and Profession in Orders and Congregations according to CCEO – Part II,” in *Ius*, vol. 10, no. 2 (June 2019), 247.

⁵⁷ SECOND VATICAN COUNCIL, Decree on Ecumenism *Unitatis redintegratio*, 21 November 1964 (=UR), no. 15, in *AAS*, 57 (1965), 102, English translation in *FLANNERY*, 465.

⁵⁸ JOHN PAUL II, Apostolic Letter *Oriente lumen*, 2 May 1995 (=OL), no. 9, in *AAS*, 87 (1995), 755, English translation in *Origins*, 25 (1995), 6.

⁵⁹ See TRESA, “The Notion of *Consecration* and *Profession* – Part I,” 91.

⁶⁰ See PATHIYAMOOLA, *The Nature of the Religious State*, 31-32.

principle consisted of two forms: the eremitical life of hermits or anchorites and the cenobitic life of monks.⁶¹

In the Eastern Churches, the tradition of monastic life was well established by the time of Saint Antony of Egypt [~251-356],⁶² “the father of monks,”⁶³ a hermit,⁶⁴ or prior to him, Saint Paul of Thebes [~227-341]⁶⁵ – the first Christian hermit.⁶⁶ Saint Antony founded institutional monasticism, which was introduced in the hermitic or anachoretic form, and is characterized by monks living in total solitude,⁶⁷ leading a private and intimate life, separating themselves from people⁶⁸ and practicing devotion, poverty, abstinence, mortification, and contemplation of divine things.⁶⁹

Cenobitic monastic life begins with Saint Pachomius [~290-346],⁷⁰ wherein monks lived within a community setting in a single building, which was called μοναστήριον (monasterion) under the rule of an ηγούμενος (igoumenos – abbot), sharing all.⁷¹ The

⁶¹ See KOLUTHARA, *Rightful Autonomy of Religious Institutes*, 6.

⁶² See M. DUNN, *The Emergence of Monasticism: From the Desert Fathers to the Early Middle Age*, Oxford, Blackwell Publishing, 2003, 2.

⁶³ SALACHAS, *La vita consacrata*, 14.

⁶⁴ See DUNN, *The Emergence of Monasticism*, 12.

⁶⁵ See E. DAY, art. “Paul, SS.,” in T. CARSON and J. CERRITO (eds.), *New Catholic Encyclopedia*, 2nd ed, vol. 11, Washington, DC, Thomson/Gale, 2003, 17.

⁶⁶ See I.C. HANNAH, *Christian Monasticism. A Great Force in History*, New York, The MacMillan Company, 1925, 19; see also DUNN, *The Emergence of Monasticism*, 67.

⁶⁷ See J.B. BEYER, “De vita consecrata in iure utriusque Codicis orientalis et occidentalis,” in *Per*, 81 (1992), 295; see also P.H. GÖRG, *The Desert Fathers: Saint Anthony and the Beginnings of Monasticism*, M.J. MILLER (English Translation), San Francisco, CA, Ignatius Press, 2011, 27.

⁶⁸ See M.B. CASEY, “The Evolution of New Forms of Consecrated Life,” in *StC*, 36 (2002), 470.

⁶⁹ See N. LODA, “L’ammissione nel monastero “*sui iuris*” secondo il *Codex canonum Ecclesiarum orientaliu* (CCEO),” in *Commentarium pro religiosiis et missionariis*, 76 (1995), 46.

⁷⁰ See M.C. MCCARTHY, art. “Pachomius, St.,” in CARSON and CERRITO, *New Catholic Encyclopedia*, vol. 10, 742.

⁷¹ See LESAGE, “Sacred Bonds in the Consecrated Life,” 80.

monks were united by pledging obedience to a superior, usually an abbot.⁷² They participated in common periods of prayer and manual work,⁷³ and strictly observed the obligations of fasting and abstinence.⁷⁴

The most notable development⁷⁵ and justification of, “the existence of monasticism from the standpoint of the world,”⁷⁶ is attributed to Saint Basil [~329-379],⁷⁷ “the Father of Eastern Monasticism.”⁷⁸ He introduced monastic rule.⁷⁹ Emphasis was placed upon complete obedience to the superior and the obligation to renounce one’s own will,⁸⁰ reflecting the fundamental characteristic of cenobitic life,⁸¹ which was conceived as a framework for the development of spiritual life.⁸² Common liturgical celebrations were the centre of this life.⁸³

⁷² See BERNARDIN, “Authenticity and Diversity in Consecrated Life,” 309; see also A. OKOYE, “The Office of a Religious Superior in the Light of the Universal Law and the Proper Law of the Congregation of the Daughters of Divine Love,” in *Commentarium pro religiosiis et missionariis*, 94 (2013), 208.

⁷³ Cf. DUNN, *The Emergence of Monasticism*, 29.

⁷⁴ See SALACHAS, *La vita consacrata*, 88; see also KOCHUPURACKAL, *Religious Authority and Power*, 74-83.

⁷⁵ See A. PINHEIRO, “Religious Life in the Eastern Code I,” in *Vidyajyoti*, vol. 60, no. 9 (1996), 608.

⁷⁶ HANNAH, *Christian Monasticism*, 42.

⁷⁷ See *ibid.*, 39.

⁷⁸ E.F. MORISON, *St. Basil and His Rule: A Study in Early Monasticism*, The S. Deiniol’s Series, no. 3, London, Oxford University Press, 1912, 4.

⁷⁹ Tradition and usage of monastic rules introduced by Saint Basil indicate their approval and did give them an important place later in decrees by pope Innocent II in Lateran II (1139). Cf. C. 18, q. 2, c. 25; see SAINT BASIL, *Ascetical Works*, M.M. WAGNER (English translation), R.J. DEFERRARI (ed. director), *The Fathers of the Church*, vol. 9, Washington, DC, The Catholic University of America Press, 1962, 223-339; see also M. O’REILLY, “The Proper Law of Institutes of Religious Life and of Society of Apostolic Life,” in M. THÉRIAULT and J. THORN (eds.), *Unico Ecclesiae servitio: Canonical Studies Presented to Germain Lesage, O.M.I., on the Occasion of His 75th Birthday and of the 50th Anniversary of His Presbyteral Ordination*, Ottawa, Faculty of Canon Law, Saint Paul University, 1991, 289; see also DUNN, *The Emergence of Monasticism*, 36.

⁸⁰ See LESAGE, “Sacred Bonds in the Consecrated Life,” 82.

⁸¹ See CASEY, “The Evolution of New Forms of Consecrated Life,” 470.

⁸² See PUJOL, *La vita religiosa orientale*, 133.

⁸³ See J. MEYENDORF, *Byzantine Theology: Historical Trends and Doctrinal Themes*, New York, Fordham University Press, 1976, 66.

The founders of monasticism in the East gave rules which illustrated the purpose of monastic asceticism. Monks follow a life that emulates the angels worshiping the Triune God. Monks represent men and women who withdraw from the material world and seek God within the walls of the monastery,⁸⁴ putting absolutely nothing before the will of Christ.⁸⁵

1.1.2.1.1 — Monasteries

The current legislation describes a monastery as an efficient cell of monastic life,⁸⁶ which is, “a religious house in which the members strive for evangelical perfection by the observance of the rules and traditions of monastic life.”⁸⁷ The *CCEO* states that monasteries are of two types, i.e., monastery *sui iuris* and dependent monastery.

CCEO, canon 433, §2 describes a monastery *sui iuris*:

A monastery *sui iuris* is one that does not depend on another monastery and is governed by its own typicon approved by competent authority.

The Eastern monastic tradition is that each monastery *sui iuris* enjoys its own autonomy of internal government;⁸⁸ i.e., has its own typicon,⁸⁹ which must be approved by

⁸⁴ Men who truly seek God, Saint Benedict advised “a vowed life in community under an abbot as an effective response to the Father’s call to sonship and brotherhood in Jesus Christ” (K. SEASOLTZ, “Monastic Autonomy and Exemption: Charism and Institution,” in *J*, 34 (1974), 330).

⁸⁵ See SALACHAS, *La vita consacrata*, 87-89.

⁸⁶ See SIBI, “Religious community,” 169.

⁸⁷ *CCEO*, c. 433, §1.

⁸⁸ See KOCHUPURACKAL, *Religious Authority and Power*, 77; see also LODA, “L’ammissione nel monastero *sui iuris*,” 52-53.

⁸⁹ “Borrowed from the Greek *typikón*, the Latin *typicum* in *CCEO* stands for the statutes (s.v.) of a monastery. Originally, the typicon was the foundation charter of a Byzantine monastery and contained three parts: (1) obligations of the monastery to its founder by way of liturgical commemoration; (2) the rules about the election of the superior of the monastery (*hegoumenos*), appointment of officials, enclosure, novitiate, food, monastic habit or clothing, and other norms that spelled out the particular obligations of the monks or nuns and their apostolate; (3) an inventory (called *brevion*) of the endowments of the monastery. *CCEO* does not use *typicum* in the sense of a liturgical typicon, which is a book of liturgical services (ritual) but in the general sense of the foundation charter of monasteries, which are variously called in Greek: *diataxis*,

the competent authority, and must be in accord with canon law. The abbot (hegumen) of the monastery *sui iuris* is the only superior who is considered as major superior.⁹⁰

Each monastery *sui iuris* can have dependent monasteries, among which some are called filial, if according to their own act of erection or to the decree given according to the typicon, they can be likened to monasteries *sui iuris*; otherwise, they are called subsidiary.⁹¹ A filial monastery (a branch monastery according to the typicon) can aspire in the future to attain the condition of a monastery *sui iuris*. A subsidiary monastery, which is an auxiliary of the monastery *sui iuris*, in the East is called, *metochion*.⁹² It cannot change its status and is dependent on a monastery *sui iuris*.⁹³ The superiors of these monasteries are dependent on the major superior of the monastery *sui iuris* and are appointed according to the typicon and canon law.⁹⁴

1.1.2.1.2 — Hermits

The Church highlights the concept of unity to be found in the variety of different types of monastic life. A member who fully consecrates him or herself through a monastic profession to a monastic life can lead an eremitical life.

In the East, monasticism has retained great unity. It did not experience the development of different kinds of apostolic life as in the West. The various expressions of monastic life, from the strictly cenobitic, as conceived by Pachomius or Basil, to the rigorously eremitic, as with Anthony or Macarius of Egypt, correspond more to different stages of the spiritual journey

diatheke, *hypomnena*, *hypotyposis*, and *thesmos*. Whatever the name in other languages (Constitutions, Holy Rule, etc.), typicon refers to such a basic written document duly approved by the competent church authority” (G. NEDUNGATT, “Glossary of the Main Terms Used in the Code of Canons of the Eastern Churches,” in *J*, 51 (1991), 458-459).

⁹⁰ Cf. *CCEO*, c. 418, §1.

⁹¹ See *CCEO*, c. 436, §1.

⁹² See SALACHAS, *La vita consacrata*, 95.

⁹³ See ABBASS, *The Consecrated Life*, 79.

⁹⁴ See *CCEO*, c. 444, §2.

than to the choice between different states of life. In any event, whatever form they take, they are all based on monasticism.⁹⁵

From ancient times, the Church promulgated norms which regulate the life of a hermit. The Quinisext Council, [the Penthekte Synod], which was held in 692 in Constantinople under Emperor Justinian II, declared that an individual who may be a potential hermit should spend three years in a monastic community and gain knowledge of cloistered life. After becoming a hermit, an individual would not be able to leave his or her dwelling place without the permission and blessing of the local bishop, and only for a serious reason.⁹⁶

The *CCEO* following the ancient Eastern tradition,⁹⁷ recognizes a hermit as a member of a monastery *sui iuris*:

A hermit is a member of a monastery *sui iuris* who devotes himself or herself entirely to heavenly contemplation and is separated totally from people and the world.⁹⁸

A member of a monastery, male or female, who aspires to lead an eremitical life in heavenly contemplation in prayer and silence, commits to a life of greater severity,⁹⁹ completely separated from the world and from other members of the monastery. Only

⁹⁵ *OL*, no. 9, in *AAS*, 87 (1995), 755, *Origins*, 25/1 (1995), 6.

⁹⁶ Council in Trullo, canon 41 states: “Those who desire to withdraw into hermitages, either in cities or in villages, and to take heed to themselves in solitude, must first enter a monastery and be trained in the reclusive life; and for three years submit themselves in fear of God to the superior of the house and show obedience in all things as is fitting; and thus professing their intention for such a life, and that they embrace it of their own will with all their heart, they must be approved by the local bishop; thereupon they must abide one more year outside the hermitage, in order that their purpose may become yet clearer: for then they shall provide proof that they are not in pursuit of vain glory, but seek this solitude for the true good itself. After the completion of this year, if they persist in this same intention, they shall be shut up in reclusion, and shall no longer be able to leave their abode when they desire, unless they be summoned by some matter of common advantage and benefit or other necessity threatening death, and then only with the blessing of the local bishop” (G. NEDUNGATT and M. FEATHERSTONE (eds.), *The Council in Trullo Revisited*, Kanonika, no. 6, Rome, Pontificio Istituto Orientale, 1995, 121-123).

⁹⁷ See BERNARDIN, “Authenticity and Diversity in Consecrated Life,” 310.

⁹⁸ *CCEO*, c. 481.

⁹⁹ See W.B. SOULE, “Hermits in Current Eastern Catholic Legislation: *CCEO* cc. 481-485,” in *Folia canonica*, 5 (2002), 154.

members of a monastery *sui iuris*,¹⁰⁰ may become hermits.¹⁰¹ A member who leads an eremitical life attains the status of a monk and is bound by three monastic vows.¹⁰² To legitimately become a hermit, the member must obtain the permission of the superior of the monastery with the consent of his or her council.¹⁰³ Furthermore, the member must live in a monastery at least six years after making a perpetual monastic profession.¹⁰⁴ The Eastern Code allows a member of a monastery *sui iuris* to seek eremitical life at a minimum age of twenty-seven, in order to ensure adequate maturity and to provide appropriate preparation.¹⁰⁵

The superior of a monastery designates the appropriate place for this purpose and provides the required conditions for solitary living,¹⁰⁶ thus enabling the hermit to live within the territory of the monastery. The written consent of the eparchial bishop is required if the hermit pursues eremitical life in a location beyond the monastery, i.e., in eparchial

¹⁰⁰ See *CCEO*, c. 433, §2.

¹⁰¹ “[...] the Church recognizes the eremitic or anchoritic life by which the Christian faithful devote their life to the praise of God and the salvation of the world [...] A hermit is recognized by law as one dedicated to God in consecrated life if he or she publicly professes in the hands of the diocesan bishop the three evangelical counsels [...]” (*CIC*, c. 603, §§1-2).

The Latin hermit can be compared to the Eastern ascetic who, while not belonging to the institute of consecrated life, imitates the life of the hermit. See ABBASS, *The Consecrated Life*, 181; see also G. NEDUNGATT (ed.), *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, Kanonika, no. 10, Rome, Pontificio Istituto Orientale, 2002, 367.

¹⁰² See SOULE, “Hermits in Current Eastern Catholic Legislation,” 156.

¹⁰³ One of the main juridical duties of councils is to advise and/or consent superiors as needed, or to facilitate or limit his or her the exercise of governing authority by superiors between chapters. Although the councillors can legally prevent a superior from legitimately exercise his or her authority in certain situations and serve as the superior’s delegate in other situations, councillors do not technically have personal authority by office *per se*. See E. McDONOUGH, “Juridical Deconstruction of Religious Institutes,” in *StC*, 26 (1992), 313.

¹⁰⁴ See *CCEO*, c. 482.

¹⁰⁵ See ABBASS, *The Consecrated Life*, 182.

¹⁰⁶ See SOULE, “Hermits in Current Eastern Catholic Legislation,” 157.

territory.¹⁰⁷ Moreover, if the hermit pursues eremitical life in another monastery which is more suitable for eremitical life, all relationships with the superior of his or her own monastery, or the superior of the monastery within whose territory the hermit is living, should be deliberately and clearly determined.¹⁰⁸ The hermit living an eremitical life is obliged to follow all of the norms of its own typicon. Even though eremitical life is presumed to be perpetual, the hermit depends on the superior. The superior with the consent of his or her council can terminate the eremitical life, even against the hermit's will.¹⁰⁹

1.1.2.2 — Orders and Congregations

The *CCEO* recognizes and promotes two other types of institutional forms of consecrated life, i.e., orders and congregations,¹¹⁰ as the flourishing consecrated life existing in the Eastern Churches to which the majority of members belong.¹¹¹

Many of the *CCEO* norms regarding the role of monks apply to all members of orders and congregations. However, the distinction in the canonical order has significant implications in regard to the power of the superiors and, in general, to their very structure as indicated in reference to the nature of the profession made by respective members.¹¹²

§1. An order is a society erected by a competent ecclesiastical authority, in which the members, although they are not monks, make a profession that is equivalent to monastic profession.

§2. A congregation is a society erected by a competent ecclesiastical authority, in which the members make profession with the three public vows of obedience, chastity and poverty,

¹⁰⁷ See *CCEO*, c. 483.

¹⁰⁸ See SOULE, "Hermits in Current Eastern Catholic Legislation," 158.

¹⁰⁹ See *CCEO*, cc. 484-485.

¹¹⁰ See T. KULANDAISAMY, "Religious Poverty of Persons in Religious Institutes according to CIC 1983 and CCEO: A Comparative Approach," in *Ius*, vol. 9, no. 1 (June 2018), 127.

¹¹¹ See ABBASS, "Revising the Eastern Canons on the Consecrated Life," 100; cf. *CTRL*, nos. 2-4, in *CLD*, vol. 10, 44-45.

¹¹² See SALACHAS, *La vita consacrata*, 191.

which, however, are not equivalent to monastic profession, but have their own force in accord with the norm of law.¹¹³

To summarize, an order is not a monastery, and the members of an order are not monks *per se*. The member, in his or her endeavour to strive for evangelical perfection, does not necessarily observe the ancient rules and traditions of monastic life. He or she observes the norms of the statutes that regulate the practice of the evangelical counsels, from which the perfection of charity towards God and neighbour is supported, according to the spirit of the founders.¹¹⁴

By means of a perpetual profession made in an order, the member assumes the religious state,¹¹⁵ which is equivalent to the monastic state, since the profession made in an order is equivalent to monastic profession.¹¹⁶ This equivalency is not made by means of the three vows, which are part of every profession, monastic or religious, but through the profession itself.¹¹⁷ The comparison of a profession made in an order with a monastic profession addresses the very nature of the consecration¹¹⁸ and the juridic effects of the profession.¹¹⁹ A perpetual profession always has an effect on an act contrary to the vow. For example, if an act can be invalidated, while under temporary profession, any acts

¹¹³ *CCEO*, c. 504, §§1-2.

¹¹⁴ See PUJOL, *La vita religiosa orientale*, 251.

¹¹⁵ See *CCEO*, c. 531.

¹¹⁶ See *CCEO*, c. 533.

¹¹⁷ See SALACHAS, *La vita consacrata*, 192.

¹¹⁸ Consecration conveys a profound commitment to following Christ, as one seeks the ultimate expression of love. See CASEY, “The Evolution of New Forms of Consecrated Life,” 467.

¹¹⁹ “It is from the public character of the vows that the juridic relationship is derived” (S. EUART, “Religious Institutes and the Juridical Relationship of the Members to the Institutes,” in *J*, 51 (1991), 110).

contrary to the profession are illicit, not invalid.¹²⁰ In addition, perpetual profession imposes an obligation of renouncing the goods the individual possesses.¹²¹

In a congregation, the member makes his or her profession which consists of the three public vows of obedience, chastity and poverty. These, however, are not juridically equated to the monastic profession, but nevertheless, it bears its own force according to the law.¹²² The three vows are not inferior in the sense of perfection to the three vows professed in monastery or order. Members of the congregations tend to strive toward evangelical perfection, without having to observe the rules and traditions of monastic life. The difference between orders and congregations lies in the disparate effects of their profession, but the members of both are called religious and not monks.¹²³

1.2 — Erection of Religious Institutes

The founders of religious institutes serve as beacons of the charisms¹²⁴ of various religious institutes which arose in the history of the Church.¹²⁵ In addition to the significant role of the founders in the birth of their religious institutes, the role of the hierarchs is also consequential.¹²⁶ The Eastern Code pays particular attention to the process of the erection

¹²⁰ See *CCEO*, c. 529, §1.

¹²¹ See *CCEO*, c. 467.

¹²² See KOLUTHARA, *Rightful Autonomy of Religious Institutes*, 122.

¹²³ See SALACHAS, *La vita consacrata*, 193-194.

¹²⁴ See G. NEDUNGATT, "Typology of Founders," in *Commentarium pro religiosus*, 79 (1998), 96.

¹²⁵ Cf. PAUL VI, *Evangelica testificatio*, no. 11, in *AAS*, 63 (1971), 503, *CLD*, vol. 7, 430.

¹²⁶ See S. HOLLAND, "A Spirit to Animate the Letter: *CCEO*, Title XII," in *J*, 56 (1996), 291.

of a monastery, an order or a congregation.¹²⁷ Until a religious institute is canonically erected by the competent ecclesiastical authority,¹²⁸ it does not exist in the eyes of law.¹²⁹

1.2.1 — Monasteries

The *CCEO* features the three levels of hierarchical government of the erection of the monastery *sui iuris* in the Eastern Churches.¹³⁰ A monastery is of pontifical right if it was erected by the Apostolic See; of patriarchal right, a stauropegial one, if it was erected by the patriarch; of eparchial right, if it was erected by the bishop.¹³¹

The Eastern Code does not particularly speak of male and female monasteries, or monks and nuns, but on the basis of the principle enunciated:

The expression of language in the masculine gender also regards the feminine gender unless the law provides otherwise or it is evident from the nature of the matter.¹³²

A regulation for the masculine gender also concerns the feminine gender; everything that is generally said of monasteries *sui iuris*, superiors, councils, synaxes, monks, etc., also applies to monasteries of nuns, which are usually monasteries *sui iuris*. Their superiors are also major superiors, as well as their vicars.¹³³ This also applies to religious institutes,

¹²⁷ See A. PINHEIRO, “Religious Life in the Eastern Code II,” in *Vidyajyoti*, vol. 60, no. 10 (1996), 663-664.

¹²⁸ “[N]o Christian can consider himself consecrated if the Church has not consecrated him in the name of God, and if it does not define and constitute with its authority the way of life of that person insofar as he participates in the state of consecration. Therefore, when the ecclesiastical authority approves and recognizes an institute of consecrated life, it publicly establishes an ecclesial society whose members are consecrated for the ministry of the Church and are recognized as such. From this fact proceed a whole series of rights and obligations which affect the consecrated person and not the other faithful” (TORRES, “Ecclesiastical Approval of Constitutions,” 125).

¹²⁹ See NEDUNGATT, “Typology of Founders,” 101.

¹³⁰ See ABBASS, *The Consecrated Life*, 75.

¹³¹ Cf. *CCEO*, c. 434.

¹³² *CCEO*, c. 1505.

¹³³ See SALACHAS, *La vita consacrata*, 90.

orders and congregations, unless the canon law expressly provides otherwise or it is evident from the nature of the matter.

1.2.1.1 — Monastery *sui iuris* of Eparchial Right

CCEO, c. 435 stipulates:

§1. It is for the eparchial bishop to erect a monastery *sui iuris*, with the previous written permission of the patriarch within the territorial boundaries of the patriarchal Church, or the Apostolic See in other cases.

§2. The erection of stauropegial monastery is reserved to the patriarch.

Within the boundaries of the territory of a patriarchal church, the eparchial bishop can erect a monastery *sui iuris* of eparchial right in his eparchy¹³⁴ after he receives a written permission from the patriarch.¹³⁵ With the changes introduced by Pope Francis in the Latin Church,¹³⁶ the Eastern norm of erection of a monastery *sui iuris* was also amended.¹³⁷ Before placing the juridical act of erection of a monastery *sui iuris* of eparchial right within the territorial boundaries of the patriarchal Church, the eparchial bishop must not only

¹³⁴ Cf. HANNAH, *Christian Monasticism*, 51.

¹³⁵ Patriarch “presides over his respective patriarchal Church as its father and head” (*CCEO*, c. 55).

“The power that the patriarch possesses, according to the norm of the canons and legitimate customs, over bishops and other Christian faithful of the Church over which he presides is ordinary and proper, but personal [...] The power of the patriarch is exercised validly only within the territorial boundaries of the patriarchal Church [...]” (*CCEO*, c. 78, §§1-2).

“What is stated in common law concerning patriarchal Churches or patriarchs is understood to be applicable to major archiepiscopal Churches or major archbishops, unless the common law expressly provides otherwise or it is evident from the nature of the matter” (*CCEO*, c. 152).

¹³⁶ Pope Francis in the *motu proprio Authenticum charismatis*, issued a new regulation concerning the establishing of all new institutes of consecrated life and societies of apostolic life in Latin Church, i.e., a diocesan bishop only validly erect institutes of consecrated life in his own territory by a formal decree, having received the written approval of the Apostolic See: “Episcopi dioecesani, in suo quisque territorio, instituta vitae consecratae formali decreto valide erigere possunt, praevia licentia Sedis Apostolicae scripto data” (FRANCIS, Apostolic Letter *motu proprio* Amending Canon 579 of the Code of Canon Law *Authenticum charismatis*, 1 November 2020, in *AAS*, 112 (2020), 1075-1076, in *Communicationes*, 52 (2020), 334).

¹³⁷ See FRANCIS, Apostolic Letter *motu proprio* by which Canon 435 §1 and Canon 506 §1 of the Code of Canons the Eastern Churches Are Modified *Ab initio*, 21 November 2020, in *AAS*, 112 (2020), 1152-1153, in *Communicationes*, 52 (2020), 338.

personally consult the patriarch, or the Apostolic See¹³⁸ – outside the territorial boundaries of the patriarchal Church or metropolitan Churches *sui iuris* and other Churches *sui iuris*,¹³⁹ the eparchial bishop must ensure that he has obtained the previous written permission,¹⁴⁰ for validity, respectively of the patriarch and at least of the permanent synod,¹⁴¹ or of the Apostolic See. Furthermore, the patriarch can erect a monastery of eparchial right in his own eparchy within the territorial boundaries of the patriarchal Church, similar to the eparchial bishops.¹⁴²

1.2.1.2 — Stauropegial Monastery *sui iuris*

For a grave reason, having consulted the eparchial bishop, and with the consent of the permanent synod, the patriarch can concede the status of a stauropegial¹⁴³ monastery in the very act of erection of a monastery *sui iuris*.¹⁴⁴

¹³⁸ The canon retained the legislation of the prescription dates from pope Pius X, in motu proprio *De religiosorum sodalitatibus*, which states that no bishop or ordinary of any place is to form a new society of either sex and permit it to be stored in his diocese unless permission is obtained from the Apostolic See, through a permission letter: “Nullus Episcopus aut cuiusvis loci Ordinarius, nisi habita Apostolicae Sedis per litteras licentia, novam alterutrius sexus sodalitatem condit aut in sua dioecesi condi permittat” (PIUS X, motu proprio *De religiosorum sodalitatibus nisi consulta Apostolica Sede non instituendis*, 16 July 1906, no. 1, in *ASS*, 39 (1906), 345.

¹³⁹ See J. ABBASS, “Erection of Monasteries *Sui Iuris*,” in *Practical Comm*, vol. 1, 879.

¹⁴⁰ A competent ecclesiastical authority officially authorizes to carry out ecclesiastical activities. See J.A. ABBO and J.D. HANNAN, *The Sacred Canons. A Concise Presentation of the Current Disciplinary Norms of the Church*, Binghamton and New York, Vail Ballou Press, Inc., 1952, 142.

¹⁴¹ See SALACHAS, *La vita consacrata*, 92-93.

For a congregation of eparchial right to become a congregation of patriarchal right, one condition applies in that the congregation has to obtain the consent of the permanent synod. See *CCEO*, c. 506, §3.

¹⁴² Cf. *CCEO*, c. 101.

¹⁴³ “Stauropegion. The term comes from the Greek, *stauropegein*, which means literally, “the planting or pitching the cross.” The term appears in the 10th c. to signify property, in particular monasteries, under the jurisdiction of the patriarch and thus not subject to the local bishop” (M. PROKURAT, A. GOLITZIN, and M.D. PETERSON, *The A to Z of the Orthodox Church*, no. 175, Lanham, MD, Toronto, Plymouth, UK, The Scarecrow Press, inc., 2010, 311).

Stauropegial monasteries should be distinguished from the greatest monasteries, called lavras, and from the patriarchal metochions, where the patriarch serves as a parish priest. Univ Lavra is only one stauropegial monastery in the Ukrainian Greek-Catholic Church among the 23 Eastern Catholic Churches.

¹⁴⁴ See *CCEO*, c. 486, §1.

Stauropegium is a liturgical rite belonging to the blessing of the ground or corner stone, or the consecration of a church. The officiating bishop or priest sets up or lowers into the ground (pegnytai [πεγνύται]) a cross (stauron [σταυρόν]) in that place where later the altar will be erected. If the bishop could not perform himself the ceremony, he might send the cross, which was considered as a symbol of the subjection of the church to his jurisdiction.

When the patriarch himself sent the cross at the erection of a monastery church, the monastery became dependent on the patriarch, and exempt from the jurisdiction of the bishop.

It cannot be established when the patriarchal stauropegium began, but the Byzantine canonist Balsamon regarded it in the 12th century as a very old privilege, and we can assume that it goes back to the 7th or 8th century.¹⁴⁵

The territory of the stauropegial monastery no longer belongs to an eparchy, but it becomes a place of the patriarchate.¹⁴⁶ The Patriarch must observe, “the regulations of the canons concerning the power, rights and obligations of resident bishops.”¹⁴⁷

In the foundation of a stauropegial monastery,¹⁴⁸ consultation is specifically required to ensure that the right of the eparchial bishop is not seriously infringed upon and that there are no abuses or conflicts.¹⁴⁹ The patriarch who intends to erect a stauropegial monastery in his own eparchy must have the consent of the permanent synod.¹⁵⁰ The foundation of a stauropegial monastery outside the territorial boundaries of the patriarchal Church belongs

¹⁴⁵ V.J. POSPISHIL, *The Law on Persons*, Code of Oriental Canon Law, Ford City, PA, St. Mary’s Ukrainian Catholic Church, 1960, 299-300.

¹⁴⁶ Cf. PIUS XII, Apostolic Letter motu proprio on Religious, Ecclesiastical Properties and Concerning the Meaning of Words for the Eastern Churches *Postquam apostolicis litteris*, 9 February 1952 (=PA), c. 164, §2, 1°, in *AAS*, 44 (1952), 108, English translation in POSPISHIL, *The Law on Persons*, 302; cf. also PIUS XII, Apostolic Letter motu proprio *Cleri sanctitati*, 2 June 1957 (=CS), c. 263, §1, in *AAS*, 49 (1957), 518, English translation in POSPISHIL, *The Law on Persons*, 133.

¹⁴⁷ CS, c. 282, in *AAS*, 49 (1957), 518, POSPISHIL, *The Law on Persons*, 139; cf. *CCEO*, c. 101.

¹⁴⁸ The study group *De Monachis ceterisque Religiosis necnon de sodalibus aliorum Institutorum vitae consecratae* of PCCICOR on formulation of the canon of stauropegial monastery, i.e., *CCEO*, canon 486, proposed to omit the term *stauropegial* because this term was not sufficiently clear but no other term is proposed for this kind of institution. The study group reformulates the canon so that any uncertainty about the concept of *Monasterium stauropegiacum* disappears. In fact, it cannot be equated with the *Monasterium exemptum*, but rather, albeit only analogically, with an *Abbatia nullius*, with the specification that in the stauropegial monasteries it is not the Abbot who becomes *Hierarcha loci (Exarchus)*, but the Patriarch himself. See *Nuntia*, 16 (1983), 59-60.

¹⁴⁹ See SALACHAS, *La vita consacrata*, 93-94.

¹⁵⁰ Cf. *CCEO*, c. 486, §1.

to the Apostolic See or to the patriarch if it is established by particular law approved by the Roman Pontiff.¹⁵¹

1.2.1.3 — Monastery *sui iuris* of Pontifical Right

A monastery *sui iuris* erected or recognized by a formal decree of the Apostolic See acquires status of pontifical right.¹⁵² Even though the *CCEO* envisages the possibility of a monastery *sui iuris* of pontifical right, at the present time, no Eastern Catholic Church *sui iuris* has a monastery *sui iuris* of pontifical right. The reason for a monastery *sui iuris* to acquire the status of pontifical right would be that, after significant growth in personnel and expansion throughout the world, the monastery *sui iuris* has one or more subsidiary monasteries outside the territorial boundaries of the patriarchal Church.

1.2.1.4 — Dependent Monastery

In order to be validly erected, a dependent monastery of pontifical right is required to obtain written consent from the Apostolic See and from the eparchial bishop of the place where the monastery is erected. To validly erect a monastery dependent on a monastery *sui iuris* of patriarchal right, a stauropegial, the written consent of the patriarch and the eparchial bishop is required. To validly erect a monastery dependent on a monastery *sui iuris* of eparchial right within the eparchy of the patriarch, only written consent of the patriarch is required, since in this case, the only eparchial bishop, is the patriarch. In order to validly erect a monastery dependent on a monastery *sui iuris* of eparchial right, within the territorial boundaries of the patriarchal Church, it is required that the written consent

¹⁵¹ See *CCEO*, c. 78, §2.

¹⁵² See *CCEO*, c. 434.

of both the authority to which the monastery *sui iuris* is subject as well as of the eparchial bishop on whose territory the dependent monastery is erected be obtained.¹⁵³

The consent of the authority pertaining to the monastery *sui iuris* is a necessary prior condition *ad validitatem*.¹⁵⁴ The eparchial bishop, in order to give his consent to erect a dependent monastery, does not have to approach to the patriarch or the Apostolic See to obtain their consent. The eparchial bishop acts independently in establishing a dependent monastery, although he consults with his advisory bodies, councils within the boundaries of his eparchy.¹⁵⁵

Permission for erecting a monastery, even a dependent one, includes permission to have a church and to perform sacred ministries, as well as to carry out religious works proper to the monastery, according to the norm of the typicon and without prejudice to the conditions lawfully stipulated in the document. If the monastery is to be converted to other uses, the same formalities are required as for erecting it.¹⁵⁶

With regard to erecting a dependent monastery of another Church *sui iuris*, including the Latin Church, which involves inter-ecclesial matters,¹⁵⁷ this dependent monastery must adhere to the law of the Church in which it is located, particularly in relation to its pastoral activities,¹⁵⁸ “except for the prescripts of the typicon or statutes that concern the internal governance of the same institute or for the privileges granted by the Apostolic See.”¹⁵⁹

¹⁵³ See MCDERMOTT, “Two Approaches to Consecrated Life,” 209.

¹⁵⁴ See *CCEO*, c. 436, §2.

¹⁵⁵ See SALACHAS, *La vita consacrata*, 95.

¹⁵⁶ See *CCEO*, c. 437, §§1 and 3.

¹⁵⁷ See PINHEIRO, “Religious Life in the Eastern Code II,” 664.

¹⁵⁸ See J. ABBASS, “Ascription of a Religious House/Institute to Another Church *Sui Iuris*,” in *Practical Comm*, vol. 1, 876.

¹⁵⁹ *CCEO*, c. 432.

1.2.2 — Confederation

CCEO, canon 439, §1 allows the establishment of a confederation of monasteries at various levels in order to demonstrate a true union between different monasteries and society, where there is a common goal in perfectly following Christ.

Several monasteries *sui iuris* of the same eparchy and subject to the same eparchial bishop can enter into a confederation with the written consent of that eparchial bishop, whose competence it also is to approve the statutes of the confederation.

The canon envisages a confederation of monasteries *sui iuris* belonging to the same Church *sui iuris* and to the same eparchy subject to the eparchial bishop. Such a confederation is of eparchial right, and is constituted with the written consent of the same eparchial bishop, who is also responsible for approving the statutes of the confederation.¹⁶⁰

Also, *CCEO*, canon 439, §2 permits the establishment of a confederation of stauropegial monasteries:

A confederation of several monasteries *sui iuris* of different eparchies or of stauropegial monasteries located within the territorial boundaries of the patriarchal Church can be entered into after having consulted the interested eparchial bishops and with the consent of the patriarch, to whom the approval of the confederation's statutes is reserved.

Although the stauropegial monastery does not belong to any eparchy and is subject to the patriarch, it is necessary to consult the eparchial bishops, who may be interested in the confederation.¹⁶¹

According to *CCEO*, canon 439, §3, a confederation of monasteries *sui iuris* of pontifical right, wherever they are situated, belonging to the same Church *sui iuris* or to

¹⁶⁰ See SALACHAS, *La vita consacrata*, 101.

¹⁶¹ See *ibid*, 102.

different Churches *sui iuris*, can be established solely with the consent of the Apostolic See, which is also responsible for approving the statutes of the confederation.¹⁶²

In addition to the aforementioned confederation of monasteries *sui iuris* of pontifical right, there may be monasteries belonging to different Churches *sui iuris* intending to form a confederation even though the *CCEO* does not provide any norms for them, within and outside the territorial boundaries of a patriarchal Church.¹⁶³ A confederation of this type can only be constituted with the consent of the Apostolic See, which is also responsible for approving the statutes of the confederation.¹⁶⁴

1.2.3 — Orders and Congregations

CCEO, canon 505, §§1-2 recognizes erection at the three different levels of hierarchical government of orders and congregations in the Eastern Churches. Orders can be raised as pontifical or patriarchal right, and congregations can be raised as pontifical, patriarchal or eparchial right.

§1. An order is of pontifical right if the Apostolic See erected it or recognized it as such by its decree; an order is of patriarchal right if, having been erected by a patriarch, it has not obtained the decree of recognition of the Apostolic See.

§2. A congregation is:

1° of pontifical right, if the Apostolic See erected it or recognized it as such by its decree;

2° of patriarchal right, if a patriarch has erected it or recognized it as such by his decree, and it has not obtained a decree of recognition of the Apostolic See;

3° of eparchial right, if, having been erected by an eparchial bishop, it has not obtained a decree of recognition of the Apostolic See or a patriarch.

¹⁶² See PUJOL, *La vita religiosa orientale*, 163-164.

¹⁶³ See J. ABBASS, “Confederations of Monasteries,” in *Practical Comm*, vol. 1, 884.

¹⁶⁴ See SALACHAS, *La vita consacrata*, 102.

Establishing a congregation in an eparchy is a significant and demanding event.

CCEO, canon 506, §1 outlines:

An eparchial bishop can erect only congregations, but he is not to erect them without the previous written permission of the Apostolic See and, in addition, within the territorial boundaries of the patriarchal Church, without having consulted the patriarch.

In addition, to obtain the prior written permission from the Apostolic See,¹⁶⁵ the eparchial bishop is also responsible for consulting the patriarch within the territorial boundaries of the patriarchal Church. In all other cases, the eparchial bishop obtains only the prior written permission from the Apostolic See.¹⁶⁶ *CCEO*, canon 506, §2 states:

A patriarch can erect orders and congregations with the consent of the permanent synod and after having consulted the Apostolic See.

Erecting orders or congregations in a patriarchal Church is also important and demanding in the life of the Church. During the review of this norm by PCCICOR, consulting the Apostolic See¹⁶⁷ is once again included in the process.¹⁶⁸

The prior written permission from the Apostolic See and the consultation of the patriarch by the eparchial bishop, or of the Apostolic See by the patriarch, in addition to being required for the validity of the establishment of the religious institute, is not a purely formal obligation. Rather, it is required as it pertains to the importance of the erection. Any negative opinion of the authorities consulted does not imply the invalidity of the act of

¹⁶⁵ See FRANCIS, *Ab initio*, in *AAS*, 112 (2020), 1152-1153, in *Communicationes*, 52 (2020), 338.

¹⁶⁶ See SALACHAS, *La vita consacrata*, 198.

¹⁶⁷ The study group *De monads ceterisque religiosis et de sodalibus aliorum institutorum vitae consecratae* of PCCICOR in the revision of this canon omitted the consultation of the Apostolic See. See *Nuntia*, 16 (1983), 73.

¹⁶⁸ See *PA*, c. 13, §2, in *AAS*, 44 (1952), 71, POSPISHIL, *The Law on Persons*, 251.

erection itself. Instead, the consent of the permanent synod is required for the validity of the act of the patriarch.¹⁶⁹

CCEO, canon 506, §3 states:

A congregation of eparchial right within the territorial boundaries of the patriarchal Church that has expanded to several eparchies of the same territory can become of patriarchal right by a decree of the patriarch, after having consulted interested parties and with the consent of the permanent synod.

When a congregation of eparchial right grows and expands to other eparchies within the territorial boundaries of the patriarchal Church, a congregation can become of patriarchal right by decree of the patriarch.¹⁷⁰ This is the transition of a congregation of eparchial right to a congregation of patriarchal right.¹⁷¹ The canon highlights the fact that in addition to the consent of the permanent synod, the patriarch should consult the interested parties. Although this consultation is necessary for validity, the norm does not specifically identify the interested parties; the eparchial bishop, bishops of eparchies where its houses were established, the members of the congregation themselves, etc.¹⁷²

A province in the same religious institutes, i.e., in orders or congregations, is erected in accordance with the authority determined by the statutes of the order or congregation.¹⁷³ These statutes determine the competent authority and the methods for proceeding with these administrative acts.¹⁷⁴

For an order or congregation of any juridical condition to validly erect a house in an eparchy, written consent of the eparchial bishop is required. The erection of a religious

¹⁶⁹ See SALACHAS, *La vita consacrata*, 199.

¹⁷⁰ See ABBASS, *The Consecrated Life*, 300.

¹⁷¹ See SALACHAS, *La vita consacrata*, 200.

¹⁷² See ABBASS, *The Consecrated Life*, 300-301.

¹⁷³ See *CCEO*, c. 508, §2.

¹⁷⁴ See SALACHAS, *La vita consacrata*, 203.

house constitutes a legal act that belongs to the competent authority of an order or a congregation, and also concerns the external order of the eparchy in whose territory the house is to be erected.¹⁷⁵ The first house of an order or congregation of patriarchal right in an eparchy, within the territorial boundaries of the patriarchal Church, is erected by the competent authority according to the statutes, but also requires the consent of the patriarch.¹⁷⁶ The same applies to the erection of a house of an order or congregation of any juridical status in the patriarch's own eparchy.¹⁷⁷ For subsequent erection of houses of an order or congregation of patriarchal right in an eparchy, within the territorial boundaries of the patriarchal Church, the consent of the patriarch is not required.

For the erection of the first house of an order or congregation of patriarchal right outside the territorial boundaries of the patriarchal Church, or the erection of the first house of an order or congregation of pontifical right of any eparchy, the consent of the Apostolic See is required in addition to the consent of the eparchial bishop of the eparchy.¹⁷⁸ After the consent of the eparchial bishop is received, the erection is carried out by the competent religious superior.¹⁷⁹ The matters mentioned in *CCEO*, canon 437 which were highlighted in 1.2.1 — Monasteries, apply also to houses of orders and congregations.¹⁸⁰

¹⁷⁵ See A. TANASIYCHUK, "Alcune questioni di diritto consacrato nella legislazione canonica orientale," in *Pravo kanoniczne*, vol. 57, no. 1 (2014), 123.

¹⁷⁶ See *CCEO*, c. 509, §1; see also MCDERMOTT, "Two Approaches to Consecrated Life," 209.

¹⁷⁷ See PINHEIRO, "Religious Life in the Eastern Code II," 664.

¹⁷⁸ See *CCEO*, c. 509, §1.

¹⁷⁹ See SALACHAS, *La vita consacrata*, 204-205.

¹⁸⁰ Cf. *CCEO*, c. 509, §2.

1.3 — Organizational Structures of Religious Institutes

Religious institutions are dependent on the hierarchs of the Church, and, at the same time, they are autonomous in their internal governance. This autonomy is manifested in the rules of the particular laws of religious institutes, within the limits indicated by canon law and which enable religious institutes to preserve its own patrimony intact.¹⁸¹ Canon law has not expressly and directly prescribed autonomy of religious institutes. However, each religious institute is endowed with internal governance and discipline, in which the *CCEO* mutely and implicitly admits the *iusta autonomia* of religious institutes.¹⁸²

1.3.1 — Hierarchical Dependence of Religious Institutes

From the first stages of the development of monasteries in the early Church, monks were subject to the authority of the bishop:

...monks of each city and region are to be subject to the bishop. [...] We have decreed that anyone who transgresses this decision of ours is to be excommunicated, lest God's name be blasphemed. However, it is for the local bishop to exercise the care and attention that the monasteries need.¹⁸³

The Council of Chalcedon, which took place in 451, decreed in canon 4 that in order to establish a monastery, express permission of the local bishop is needed.¹⁸⁴ Furthermore, the same Council put monasteries under the jurisdiction of the local bishop.¹⁸⁵ As a result

¹⁸¹ See M.F. ROSINSKI, "Mercy and Due Process in Religious Institutes," in *StC*, 51 (2017), 592.

¹⁸² See PINHEIRO, "Religious Life in the Eastern Code I," 613-614.

¹⁸³ *Council of Chalcedon (451)*, c. 4 in N.P. TANNER (ed.), *Decrees of the Ecumenical Councils: Nicaea I to Lateran V*, vol. 1, London, Sheed & Ward and Georgetown University Press, 1990, 89.

¹⁸⁴ See S. HOLLAND, "Religious and Bishops as Custodians of Communion," in *J*, 62 (2002), 312; see also HANNAH, *Christian Monasticism*, 51.

¹⁸⁵ See D. KAY, "The Historical Origins of Canon 591 of the Code of Canon Law," in *StC*, 25 (1991), 454-457.

of such subordination, monastic life first acquired canonical form.¹⁸⁶ Furthermore, the same Council in canon 8 subjected monks to the jurisdiction of the local bishop:

Clerics in charge of almshouses and monasteries and martyrs' shrines are, in accordance with the tradition of the holy fathers, to remain under the jurisdictions of the bishop in each city. They are not to be self-willed and rebellious towards their own bishop. Those who dare to break a rule of this kind in any way whatever, and are not obedient to their own bishop, are, if they are clerics, to be subject to the canonical penalties; and if they are monks or layfolk they are to be made excommunicate.¹⁸⁷

All religious institutes, canonically established through the official recognition of the church hierarchy, are subject to subordination to the hierarchs of the Catholic Church.¹⁸⁸

1.3.1.1 — Religious Institutes of Pontifical Right and Its Dependence

In the Catholic Church, autonomy is recognized not as complete independence, but rather as a rightful form of autonomy.¹⁸⁹ Religious institutes are granted legal autonomy, allowing their competent authorities to oversee their internal affairs in living communion with Church hierarchy, i.e., the Apostolic See, the Patriarch or the eparchial bishop:¹⁹⁰

§1. All religious are subject to the Roman Pontiff as their highest superior, whom they are also bound by the obligation to obey by virtue of the vow of obedience.

§2. In order better to provide for the good of institutes and for the needs of the apostolate, the Roman Pontiff, by reason of his primacy in the entire Church and with a view to common advantage, can exempt institutes of consecrated life from the governance of the eparchial bishop and subject them to himself alone or to another ecclesiastical authority.¹⁹¹

¹⁸⁶ See KOCHUPURACKAL, *Religious Authority and Power*, 99-100.

¹⁸⁷ *Council of Chalcedon (451)*, c. 8 in TANNER, *Decrees of the Ecumenical Councils*, vol. 1, 91.

¹⁸⁸ See CHIRAMEL, *The Code of Canons of the Eastern Churches*, 166.

¹⁸⁹ *CCEO*, canon 638, §1 highlights that in the Church institutes of consecrated life enjoy autonomy.

¹⁹⁰ See KOLUTHARA, *Rightful Autonomy of Religious Institutes*, 100.

¹⁹¹ *CCEO*, c. 412, §§1-2.

All religious members and every religious institute are *peculiari modo* subject to the Roman Pontiff¹⁹² as their supreme superior and are obliged to obey him by virtue of their vow of obedience.¹⁹³

Concerning religious affiliation with a particular Church headed by the patriarch, no canon exists that defines a general commitment or dependence of these religious towards him. The Roman Pontiff, by reason of his primacy over the universal Church, can exempt institutes of consecrated life from the rule of the eparchial bishop:¹⁹⁴

With a view to providing better for the needs of the whole of the Lord's flock and for the sake of the general good, the Pope, as primate over the entire Church, can exempt any institute of Christian perfection and its individual members from the jurisdiction of local ordinaries and subject them to himself alone. Similarly they can be left or entrusted to the care of the appropriate patriarchal authorities.¹⁹⁵

The privilege of exemption whereby religious are reserved to the control of the Supreme Pontiff, or of some other ecclesiastical authority, and are exempted from the jurisdiction of bishops, relates primarily to the internal organization of their institutes.¹⁹⁶

Religious institutes exempt from the governance of the eparchial bishop are subject either to the Apostolic See or the patriarch, since their major superiors also have jurisdiction in both forums.¹⁹⁷ The exemption is principally limited to the area of internal governance of the religious institutes.¹⁹⁸

¹⁹² See *CCEO*, c. 427. "Clerics are bound by a special obligation to show reverence and obedience to the Roman Pontiff, the patriarch and the eparchial bishop" (*CCEO*, c. 370).

¹⁹³ See *Nuntia*, 16 (1983), 11.

¹⁹⁴ See J. ABBASS, "Religious Dependence on the Roman Pontiff and Exemption," in *Practical Comm*, vol. 1, 853.

¹⁹⁵ *LG*, no. 45, in *AAS*, 57 (1965), 51, *FLANNERY*, 405.

¹⁹⁶ SECOND VATICAN COUNCIL, Decree on the Pastoral Office of Bishops in the Church *Christus Dominus*, 28 October 1965 (=CD), no. 35 (3), in *AAS*, 58 (1966), 691, English translation in *FLANNERY*, 585.

¹⁹⁷ See R. CHERUVILPARAMBIL, "The Hierarchical Authorities of the Church and the Religious Institutes. Part I – The Roman Pontiff and the Religious Institutes," in *Ius*, vol. 8, no. 2 (December 2017), 201.

¹⁹⁸ See KOLUTHARA, *Rightful Autonomy of Religious Institutes*, 110.

Autonomy of religious institutes flows from the charism of religious institutes,¹⁹⁹ a constitutive aspect of consecrated life. Autonomy signifies the right to provide particular law for oneself, within the limits set by canon law, as well as the right to live and act as a self-governing institute as a juridic person in accordance with such norms. The exemption is a concession granted by the Apostolic See for the greater advantage of autonomy, its strengthening or for a higher level of autonomy.²⁰⁰

CCEO, canon 413 points to the hierarchical order and its connection with the various religious Eastern Churches:

Unless the law provides otherwise, religious institutes are subject with respect to internal governance and religious discipline directly and exclusively to the Apostolic See if they are of pontifical right; if they are of patriarchal or eparchial right, they are directly subject to the patriarch or eparchial bishop, with due regard for can. 418, §2.

The norm clearly distinguishes three types of dependence that religious institutes have on the hierarchs of the Church, which refers to the intention of the legislator regarding the origin of the various religious institutes.²⁰¹ The direct and exclusive external power over the religious institutes, including monasteries, orders and congregations of pontifical right, rests with the Apostolic See, which it exercises through its various dicasteries and, in particular, through the Dicastery for the Eastern Churches. Through this dicastery, the eastern religious harmonizes their relation with the Apostolic See. This dicastery acts after also having heard other organs of the Roman Curia,²⁰² e.g., “the indult for members in perpetual vows to depart from Institutes of Consecrated Life or Societies of Apostolic Life

¹⁹⁹ See SEASOLTZ, “Monastic Autonomy and Exemption,” 326.

²⁰⁰ See PINHEIRO, “Religious Life in the Eastern Code I,” 614.

²⁰¹ See SALACHAS, *La vita consacrata*, 90.

²⁰² See M. BROGI, “La Congregazione per le Chiese Orientali,” in P.A. BONNET and C. GULLO (eds.), *La Curia Romana nella Cost. Ap. “Pastor Bonus,”* Vatican City, Libreria editrice Vaticana, 1990, 251.

of Pontifical right.”²⁰³ This competence of the Apostolic See also applies to the internal governance and discipline inherent in the institute. The norm of law excludes the intervention of the patriarch or the eparchial bishop, if not previously granted.²⁰⁴

1.3.1.2 — Stauropegial Monastery and Patriarchal Order and Congregation and Its Dependence

The *CCEO* recognizes religious institutes of patriarchal right. The stauropegial monastery is directly subject to the patriarch in such a way that he alone enjoys the rights and obligations of an eparchial bishop toward the monastery,²⁰⁵ the members assigned to it, as well as the persons who day and night dwell in the monastery. Other persons, connected with the monastery, however, are subject directly and exclusively to the patriarch only in those aspects which concern their duties and offices.²⁰⁶ The stauropegial status, “is not a privilege nor is a patriarchal exemption equal to a pontifical exemption.”²⁰⁷

Orders or congregations of patriarchal right, in their internal government and discipline, are directly dependent on the patriarch. However, the patriarch does not come under the designation of superior of monks and other religious.²⁰⁸ His authority is exercised *from without*, in the nature of a supervisory power.²⁰⁹ It is exceptional in that the general

²⁰³ FRANCIS, Apostolic Constitution on the Roman Curia and Its Service to the Church in the World *Praedicate Evangelium*, 19 March 2022 (=PE), art. 124, §2, 3°, in *AAS*, 114 (2022), 420, English translation in *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, second printing, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 2024, Appendix 2 (=Code of Eastern Churches), 824.

²⁰⁴ See PUJOL, *La vita religiosa orientale*, 63.

²⁰⁵ See D. SALACHAS, “La vita monastica e religiosa nel *Codex canonum Ecclesiarum orientalium*,” in *Euntes docete*, 48 (1995), 107.

²⁰⁶ Cf. *CCEO*, c. 486, §2.

²⁰⁷ NEDUNGATT, *The Spirit of the Eastern Code*, 253.

²⁰⁸ See *CCEO*, cc. 413, 418, §2.

²⁰⁹ See CHIRAMEL, *The Code of Canons of the Eastern Churches*, 168.

principles, that require everyone to submit to the Roman Pontiff who is the Vicar of Christ and Pastor of the entire Church, who enjoys supreme, full, immediate and universal ordinary power in the Church and possesses a primacy of ordinary power over all the eparchies and groupings,²¹⁰ are binding on all religious institutes.²¹¹

1.3.1.3 — Monasteries and Congregations of Eparchial Right and Its Dependence

The *CCEO* provides two types of eparchial religious institutes, namely: the eparchial monastery and the eparchial congregation. According to the Eastern Code, the eparchial bishop cannot erect an order.²¹² Eparchial religious institutes are subjected to the authority of eparchial bishops, with respect to internal rule and religious discipline.²¹³

Eparchial religious institutes enjoy the principle of rightful autonomy of Eastern religious institutes in their own internal governance and religious discipline.²¹⁴ *CCEO*, canon 418, §2 excludes eparchial bishops “under the designation *superior*.” This means that each religious institute has its own superiors, who are either elected or appointed, and their responsibilities are defined in accordance with the particular laws governing their respective religious institutes. The eparchial bishop is to render vigilance and safeguard the nature and specific purpose of the religious institutes.²¹⁵ Furthermore, he is to subject religious, as appropriate, to the authority of the local bishop or the patriarch regarding

²¹⁰ See *CCEO*, cc. 43-45; see also J. LLOBELL, “Due Process and the “Administrativization” of the Canonical Penal Procedure,” in *StC*, 57 (2023), 178.

²¹¹ See KOLUTHARA, *Rightful Autonomy of Religious Institutes*, 112.

²¹² See CHERUVILPARAMBIL, “The Hierarchical Authorities of the Church and the Religious Institutes. Part I,” 198.

²¹³ See *CCEO*, c. 413.

²¹⁴ See *Nuntia*, 16 (1983), 18.

²¹⁵ See R.M. MCDERMOTT, “The Vigilance of the Diocesan or Eparchial Bishop: Diocesan/Eparchial Right Institutes/*Sui iuris* Monasteries/Hermits/Ascetics/Virgins/Widows,” in *Studies in Church Law*, 8 (2012), 152.

matters even of internal governance;²¹⁶ however, he cannot demand a complete dependence from eparchial institutes to his authority.²¹⁷

1.3.1.4 — Authority of Hierarchs in Correction of Religious

CCEO, canon 415, §1 stipulates that all religious are subject to the power of the local hierarch in matters that pertain to public worship, preaching, education of faithful, religious decorum and all other works of the apostolate.

The eparchial bishop is responsible for edification and building the ecclesial community. He is bound to suppress any abuse that comes from religious institutes in his territory.²¹⁸ If a religious, according to *CCEO*, canon 415, §4, commits “a delict outside their house and have not been punished by their own superior, having been warned by the local hierarch, such a person can be punished by that hierarch even if they have legitimately left the house and returned to it.” Jobe Abbass associates the committing of this delict “within the context of the apostolate.”²¹⁹ George Nedungatt states that this is “not necessarily related to the apostolate.”²²⁰ The eparchial bishop, for a very serious and urgent cause, may intervene (e.g., forbid the religious from dwelling and working in his

²¹⁶ See ABBASS, *The Consecrated Life*, 30.

²¹⁷ See KOLUTHARA, *Rightful Autonomy of Religious Institutes*, 143.

²¹⁸ See SALACHAS, *La vita consacrata*, 69-70.

²¹⁹ ABBASS, *The Consecrated Life*, 39-40.

“It should be noted that this norm refers to the external works of the religious and not to their houses or internal life which seems to be an issue in c. 417 of the *CCEO*” (MCDERMOTT, “Two Approaches to Consecrated Life,” 202).

²²⁰ NEDUNGATT, *A Guide to the Eastern Code*, 350.

eparchy)²²¹ in the case where a religious has committed a delict outside the religious house, when the religious superior, after being warned, has neglected to provide for it.

CCEO, canon 417 emphasizes, “[i]f abuses have crept into the houses of institutes of patriarchal or pontifical right or their churches,” and when the superior, warned by the local hierarch, has failed to take care of it,²²² the same local hierarch is obliged to refer the matter, without delay, to the attention of the authority to which the institute is immediately subject,²²³ i.e., the eparchial bishop in institutes of eparchial right; the patriarch in institutes of patriarchal right; and the Apostolic See in institutes of pontifical right, as in the Dicastery for the Eastern Churches.²²⁴

1.3.2 — Higher Authority of Religious Institutes

CCEO, canon 418, §1 explicitly recognizes major superiors who govern the entire institute or one of its provinces:

The major superiors are: the president of a monastic confederation, the superior of a monastery *sui iuris*, the superior general of an order or congregation, the provincial superior, their vicars

²²¹ See G. GIROTTI and J. KHOURY, Commentary on c. 415, in PINTO, *Commento CCEO*, 367; cf. A. ESPELAGE, “Expulsion of Accused Religious from Diocese by Bishop,” in F.S. PEDONE and J.I. DONLON (eds.), *Roman Replies and CLSA Advisory Opinions*, 2005, Washington, DC, CLSA, 2005, 65-66.

²²² A person who, by act or omission, or a person who through culpable negligence, has abused power, an office, a ministry, or another function in the Church is to be punished with an appropriate penalty. See *CCEO*, c. 1464, §§1-2.

The penalty is an indeterminate, therefore, the penalty cannot be perpetual and privation from office is excluded. See *CCEO*, c. 1409, §2.

Nevertheless, *Come una Madre amorevole* establishes that one of the *grave reasons* of removal from ecclesiastical office is the negligence of a diocesan bishop or eparchial bishop or one equal to a bishop (one who even holds a temporary title and is responsible for a Particular Church or eparchy/diocese, and those who are by law equal to them, namely a major superior of religious institutes and societies of apostolic life of pontifical right) in the exercise of his office, and in particular, in relation to cases of sexual abuse inflicted on minors and vulnerable adults. See FRANCIS, Apostolic Letter *motu proprio Come una Madre amorevole*, 4 June 2016, art. 1, in *AAS*, 108 (2016), 715-716, English translation in RENKEN, *Substantive Law*, 601-602.

²²³ See G. GIROTTI and J. KHOURY, Commentary on c. 417, in PINTO, *Commento CCEO*, 368.

²²⁴ Cf. *PE*, art. 84, §1, in *AAS*, 114 (2022), 410, *Code of Eastern Churches*, 815.

and others who have power like that of provincials, and also those who, in the absence of the above-mentioned persons, in the interim legitimately succeed them in office.

To safeguard the internal governance, *CCEO*, canon 418, §2 excluded local hierarchs and patriarchs from the list of major superiors:

Neither the local hierarch nor the patriarch comes under the designation “superior of monks and other religious,” with due regard for the canons that assign to the patriarch or local hierarch power over them.

According to the norms of canon law and particular law, the religious institutes enjoy their own discipline.²²⁵ When a religious takes the office of major superior, he or she also bears responsibility for his or her own religious institute; to supervise and promote the profession of Christian life and the profession of the evangelical counsels. Major superiors must have knowledge of the life of their own institute, and, if necessary, they must address issues related to discipline and probity of life of their own members.²²⁶

1.3.2.1 — Superiors in Monasteries

Canon law requires that the superior of a monastery *sui iuris* is to possess the necessary qualities in order to properly carry out the duties of his or her office. For validity, in order that a person be capable to assume the office of superior of a monastery *sui iuris*, the person must be perpetually professed at least ten years, counted from the first profession,²²⁷ and be at least forty years old.²²⁸ This is the minimum requirement. The typicon may require more with regard to age, profession or even other qualifications.²²⁹

²²⁵ See MCDERMOTT, “Two Approaches to Consecrated Life,” 202.

²²⁶ See PUJOL, *La vita religiosa orientale*, 78.

²²⁷ See *ibid*, 172-173.

²²⁸ See *CCEO*, c. 442.

²²⁹ See ABBASS, *The Consecrated Life*, 94.

The typicon also establishes the age of the superior of a dependent monastery who is elected *ad tempus*.²³⁰

The *CCEO* prescribes that the superior of any monastery *sui iuris* must be elected by the synaxis of the monastery in accordance with the rules of its typicon,²³¹ and not contrary to the canon law.²³² *CCEO*, canon 443, §1 dictates that every election of a superior of a monastery *sui iuris* is presided over by the eparchial bishop or through another²³³ who is not a member of the monastery.²³⁴ In the monastery *sui iuris* of eparchial²³⁵ or of pontifical right, the eparchial bishop presides either personally or through a delegate.²³⁶ In the stauropegial monastery, the patriarch has the right to preside either personally or through a delegate.²³⁷

The typicon of the monastery *sui iuris* will determine if the elected superior of the monastery *sui iuris* must seek confirmation.²³⁸ The office of superior of a monastery *sui iuris* is conferred for an indeterminate time,²³⁹ unless the typicon states otherwise.²⁴⁰ Following the Second Vatican Council, the norms for the future *CCEO*, published in 1991,

²³⁰ See *CCEO*, c. 444, §2.

²³¹ The typicon must foresee all components of the election, i.e., who can convene the electoral synaxis, who has an active and passive voice, or only an active one, how the designation of the electors, the time, the hour, the place of the election, the scrutineers, the way of casting the vote, the proclamation the person elected, etc. See PUJOL, *La vita religiosa orientale*, 176.

²³² See TANASIYCHUK, “Alcune questioni di diritto consacrato,” 118.

²³³ Cf. HANNAH, *Christian Monasticism*, 51.

²³⁴ See PUJOL, *La vita religiosa orientale*, 176.

²³⁵ See MCDERMOTT, “The Vigilance of the Diocesan or Eparchial Bishop,” 153.

²³⁶ See R. CHERUVILPARAMBIL, “The Hierarchical Authorities of the Church and the Religious Institutes. Part II – The Patriarch as the Hierarchical Authority of the Institutes of Consecrated Life,” in *Ius*, vol. 9, no. 1 (June 2018), 120.

²³⁷ See J. ABBASS, “Electing the Superior of a Monastery *Sui Iuris*,” in *Practical Comm*, vol. 1, 888.

²³⁸ See *CCEO*, c. 958.

²³⁹ See PUJOL, *La vita religiosa orientale*, 179.

²⁴⁰ See *CCEO*, c. 444, §1.

were changed²⁴¹ and allowed the office to be determined by the typicon.²⁴² Superiors who have completed their seventy-fifth year of age, or who have become less capable of fulfilling the duties of their office because of failing health or some other grave cause,²⁴³ except in the case of mental disorder²⁴⁴ shall submit a resignation from office to the synaxis, which is to accept it.²⁴⁵

The election of the superior of a monastic confederation takes place at the synaxis according to the rules and the statutes of the same confederated monastery *sui iuris*. If there is a re-election, the current president of the confederation, “presides at the election personally or through another.”²⁴⁶

²⁴¹ “Diocesan bishops and others whose juridical position corresponds to there are earnestly requested to resign from their office if on account of advance age or from any other grave cause” (*CD*, no. 21, in *AAS*, 58 (1966), 683, *FLANNERY*, 575).

²⁴² However, the evolution of times and current tendencies throughout the Church, especially after the Council, suggest overturning that principle and establishing as a general norm the temporariness of the superior to be determined in the typicon, not placing any limit on possible re-elections if the good of the monastery requires it. See *Nuntia*, 4 (1977), 11.

²⁴³ The resignation may occur similar to resignation of eparchial bishops before reaching the age of seventy-five on account of illness or other serious reasons. See FRANCIS, *Rescriptum ex audientia* on the Resignation of Diocesan Bishops and Those Holding Titles of Office by Pontifical Nomination, 3 November 2014, art. 4, in *AAS*, 106 (2014), 884; see also *CCEO*, cc. 967, 969, 970, §1.

²⁴⁴ The Eastern Code does not provide a principle for resignation or removal from office in case of mental disorder. *CCEO*, canon 514, §2 refers it to the internal affairs of a religious institute which must be provided in the typicon or in statutes.

The superior general is removed from his office, if for a permanent reason he becomes incapable of governing. See *Constitutiones Ordinis Basiliani sancti Josaphat*, promulgated by the Superior General P. MYSKIW, OSBM, Rome, General Curia, 1954, rule 353, §4.

“The removal of the Superior General from office falls to the competence of the Apostolic See. The Vicar General must provide clear and sufficient reasons for the removal, along with the relevant documentation and the opinion in writing of each of the General Councillors” (*Rules: The Basilian Order of Saint Josaphat. History-Teachings-Statutes-Appendices*, promulgated by the Superior General G. VIOMAR, OSBM, Winnipeg, OSBM Publication, 2023 (= *ROSBM*), rule 403, §2).

This would happen in a similar way in other religious institutes. The confirmation belongs to the authority to whom the religious institute is subject.

²⁴⁵ See *CCEO*, c. 444, §3.

²⁴⁶ *CCEO*, c. 443, §2.

1.3.2.2 — Major Superiors in Orders or Congregations

The major superiors in orders or in congregations are: the superior general, the provincial superior, their vicars, (the vicar general and the provincial vicars), others who have power corresponding to that of provincials, and those who, if the aforementioned are absent, in the meantime, legitimately succeed them in office.²⁴⁷

The *CCEO* provides the requirements for each office in orders and congregations for election or appointment.²⁴⁸ In order for a member to be elected validly to the office of superior general,²⁴⁹ he or she “must be at least ten years from first profession”²⁵⁰ and “he or she be at least thirty-five years old.”²⁵¹ However, the statutes may raise the age, and determine the form, the time, the participants, the place, etc.²⁵² In order for a person to be dispensed from a canonical impediment for the office he or she is seeking, he or she must be voted to be postulated to the Apostolic See according to canon law²⁵³ as well as the statutes of the religious institute.²⁵⁴

CCEO, canon 514, §§1 and 3 provides that all superiors, including the superior general, are to be constituted for an appropriate term of office, unless the statutes decree differently for the superior general. Also, the statutes shall provide norms for how long the member may hold the same consecutive office of superior.

²⁴⁷ See *CCEO*, c. 418, §§1-2.

²⁴⁸ See J. ABBASS, “Qualifications for Office,” in *Practical Comm*, vol. 1, 977-978.

²⁴⁹ See *CCEO*, c. 515, §1.

²⁵⁰ *CCEO*, c. 513, §1.

²⁵¹ *CCEO*, c. 513, §2.

²⁵² See PUJOL, *La vita religiosa orientale*, 270.

²⁵³ See *CCEO*, cc. 961-964.

²⁵⁴ Reasons for canonical impediments may be circumstances, such as, not sufficient time living in community after making a first profession, too long serving in the same office, or personal age.

The offices of other major superiors, (the provincial superior, the vicar general and the provincial vicar) follow the same norms as that of the superior general. However, *CCEO*, canon 515, §2 does not require a minimum age necessary to be appointed or elected to these offices. Therefore, it leaves these, as well as other requirements, e.g., the blessing of the local bishop,²⁵⁵ to be established by the statutes of the religious institutes.²⁵⁶

1.4 — Stages of Consecrated Life and Formation

The strength and continuity of the Church largely depend on the number of its vocations to the priesthood and consecrated life. In the case of a religious institute, its growth and vital activity also depend on the quality and number of its members. Therefore, recruiting of vocations to the consecrated life is one of the main concerns of the Church, especially religious institutes.²⁵⁷

1.4.1 — Postulancy in Religious Institutes

Consecrated life is open to all Christians.²⁵⁸ *CCEO*, canon 448 states:

For one to be admitted into a monastery *sui iuris*, it is required that the person be moved by the right intention, be suitable for leading the monastic life, and not be prevented by any impediment established by the law.

The candidate for consecrated life, to a monastery, order or congregation, needs to have the qualities that the Church demands.²⁵⁹ In order for men and women²⁶⁰ to be

²⁵⁵ See PUJOL, *La vita religiosa orientale*, 172-173.

²⁵⁶ See ABBASS, *The Consecrated Life*, 314-315.

²⁵⁷ See PINHEIRO, “Religious Life in the Eastern Code I,” 614-615.

²⁵⁸ See *LG*, no. 43, in *AAS*, 57 (1965), 50, *FLANNERY*, 403.

²⁵⁹ See LODA, “L’ammissione nel monastero *sui iuris*,” 56.

²⁶⁰ See *PC*, no. 1, in *AAS*, 58 (1966), 702, *FLANNERY*, 611.

admitted to consecrated life, it is necessary for the candidate to have the right intention. That is, it is necessary that the candidate be motivated by a supernatural reason, such as seeking evangelical perfection and holiness of life, dedicating him or herself to the purpose of the monastery, order or congregation.²⁶¹ A candidate shall be physically and morally suitable²⁶² for consecrated life and must have none of the impediments established by *CCEO*, canons 448 and 517, §1 or particular law, nor those of natural law.²⁶³ Judging the presence of these elements in a candidate is up to those who must admit him or her to the religious institute.²⁶⁴

Before the candidate can be admitted to the consecrated life and into the novitiate, it is advisable that a period of time be dedicated to suitable preparation. The duration of the postulancy is to be established in the typicon of the monastery *sui iuris*,²⁶⁵ the statutes of the monastic confederation, or the statutes of the order or congregation for all candidates.²⁶⁶ If necessary, it can vary for the good of a candidate; for his or her formation and appropriate

²⁶¹ See SIBI, “Religious community,” 173.

²⁶² CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETY OF APOSTOLIC LIFE, Directives on Formation in Religious Institutes *Potissimum institutioni*, 2 February 1990 (=PI), no. 34, in *AAS*, 82 (1990), 494, English translation in *Origins*, 19 (1989-1990), 586-587.

²⁶³ See PUJOL, *La vita religiosa orientale*, 187.

²⁶⁴ See C. MUROPA, “Personnel Files, Confidentiality, and the Right to Privacy,” in *StC*, 57 (2023), 91.

²⁶⁵ The duration of the postulancy is not determined. *CCEO*, canon 449 directs to the particular law of the monastery *sui iuris* (monastic confederation). Moreover, this canon does not determine the place where this postulancy is to be carried out, and no further reference is made to the habit. It is certain that the lack of a specified duration for postulancy does not question the validity of the novitiate. The admission to a monastery *sui iuris*, i.e., to a postulancy, can be seen as a progressive process of formation, and the duration of postulancy is its first step in formation. The legislation does not yet specify who is the competent superior for this phase of admission to a monastery *sui iuris*. In the absence of specific determination, it seems that the major superior is competent authority to admit to postulancy (*CIC/17*, canon 539, §2 recognized the right of the major superior to extend the duration of the postulancy), unless the typicon of the monastery *sui iuris* regulates this. See LODA, “L’ammissione nel monastero *sui iuris*,” 60.

²⁶⁶ *CCEO*, canon 518 is silent about who is competent to admit a candidate to postulancy. The statutes of order or congregation are to determine a competent superior and the duration of postulancy.

preparation.²⁶⁷ The candidate must pass the introductory period of time in the place designated by the proper superior; the monastery or house in the order or congregation and under the direction of an expert monk or nun, who will facilitate the appropriate preparation of the candidate, ensuring the better possibility of a proper judgment on whether or not the candidate has a vocation.²⁶⁸

1.4.2 — Novitiate in Religious Institutes

The novitiate in the consecrated life serves to:

...have the novice know the primary and essential requirements of the religious life and also, in order to strive for perfect charity, to implement the evangelical counsels of chastity, poverty and obedience of which he will, in due time, make profession...²⁶⁹

Canon law establishes impediments,²⁷⁰ which prohibit a person from being validly admitted to the novitiate. The typicon of a monastery *sui iuris* and the statutes of monastic confederation, orders or congregations may add additional impediments²⁷¹ which prohibit a person from being validly admitted to the novitiate.

CCEO, canons 450 and 517, §1 determine, the following cannot be validly admitted to the novitiate:

1° those who are not in full communion with the Catholic Church;

²⁶⁷ See PUJOL, *La vita religiosa orientale*, 279.

²⁶⁸ See *ibid*, 189.

²⁶⁹ CONGREGATION FOR RELIGIOUS AND FOR THE SECULAR INSTITUTES, Instruction on the Renewal and Adaptation of Formation for Living the Religious Life *Renovationis causam*, 6 January 1969, no. 13, in *AAS*, 61 (1969), 113, English translation in *CLD*, vol. 7, 500.

²⁷⁰ See J. ABBASS, “Impediments to Valid Admission to the Novitiate,” in *Practical Comm*, vol. 1, 895.

²⁷¹ For instance, “[t]he following cannot be validly admitted to the novitiate: eparchial or titular bishops, even if they have just been named” (*ROSBM*, rule 33, 7°).

2° those who have been punished with canonical penalties, which include penalties of privation, suspension, removal from the clerical state and minor excommunication;²⁷²

3° those who are under imminent threat of a serious penalty²⁷³ on account of a delict of which they are legitimately accused;²⁷⁴

4° those who are under eighteen years of age, except if it is the case of a monastery which has temporary profession, in which case, seventeen years of age is sufficient;²⁷⁵

5° those who are entering the monastery induced by force, grave fear or by fraud, or those who are admitted by a superior induced in the same way, which must be serious in relation to the person affected;²⁷⁶

6° spouses, during a marriage, consummated or not consummated, which continues to exist despite civil divorce, or perpetual separation granted by ecclesiastical or civil authority;²⁷⁷

²⁷² Cf. *CCEO*, cc. 1436-1437; see ABBASS, *Two Codes in Comparison*, 65; see also J. ABBASS, “Canonical Studies: Making the Case for a Course on Conflict of Laws,” in *StC*, 46 (2012), 498-499; cf. also P. ARTNER, “Disciplinary Measures Outside Book VI of the 1983 *CIC*,” in *StC*, 42 (2008), 492.

²⁷³ “Unless another penalty is determined by law, according to the ancient traditions of the Eastern Churches, penalties can be imposed that require some serious work of religion or piety or charity to be performed, such as certain prayers, a pious pilgrimage, a special fast, alms, spiritual retreats” (*CCEO*, c. 1426, §1).

²⁷⁴ For example, a major excommunication for heresy or apostasy (*CCEO*, c. 1436, §1), violation of the Divine Eucharist (*CCEO*, c. 1142), and simony regarding the conferral and reception of the sacraments (*CCEO*, c. 1461). See J. ABBASS, “The Admission of Eastern Catholics to the Novitiate of Latin Religious Institutes,” in *StC*, 36 (2002), 312.

²⁷⁵ “The required age for valid admission to the novitiate of an order and congregation is seventeen years old” (*CCEO*, c. 517, §1).

²⁷⁶ See ABBASS, “Impediments to Valid Admission to the Novitiate,” 897.

²⁷⁷ See PUJOL, *La vita religiosa orientale*, 198.

7° those who are held by the bond of religious profession or by another sacred bond to an institute of consecrated life, monastery *sui iuris*, order or congregation, unless it is a case of lawful transfer.²⁷⁸

A novitiate which began invalidly with these impediments is always null, even if the cause of the impediment has ceased to exist during the novitiate. To validate it, a dispensation is always required, because the impediment is for admission to the novitiate or for the beginning of the same, and not for the novitiate itself.²⁷⁹ If the novitiate is invalid, or the proper dispensation has not been obtained, it follows that the subsequent religious profession will be invalid, since every religious profession presupposes a valid novitiate.²⁸⁰

CCEO, canons 451 and 517, §2 enumerate the impediments which prevent a person to be lawfully admitted to the novitiate. Candidates cannot be admitted licitly to the novitiate from another Church *sui iuris*, including a candidate from the Latin Church,²⁸¹ unless the candidate is destined for a dependent monastery of his or her own Church.²⁸² Regarding an order or a congregation, a candidate cannot be admitted to the religious institute of another rite without the permission of the Apostolic See,²⁸³ unless it has houses

²⁷⁸ If there is a well-founded doubt about the validity of the previous religious profession, the doubt must be resolved by an ecclesiastical authority, such as the Apostolic See, which can grant the dispensation *ad cautelam*. See *ibid*, 201.

²⁷⁹ See *ibid*, 195.

²⁸⁰ See *CCEO*, cc. 464, 1°, 517, §2.

²⁸¹ One is admitted unlawfully to the novitiate of a monastery of a rite different from his own, unless he has obtained permission from the Apostolic See. See *Nuntia*, 11 (1980), 26, c. 39; see also J. ABBASS, “Comparing the Consecrated Life in the Latin and Eastern Codes,” in *Folia canonica*, 3 (2000), 162; see also ABBASS, “Canonical Studies,” 491-492.

²⁸² See *CCEO*, c. 432; cf. J. ABBASS, “The Missing Link in the Legislative History of the *CCEO* Canons,” in *J*, 71 (2011), 181.

²⁸³ “Other clerics and members of institutes of consecrated life are bound to observe faithfully their own rite and to acquire always a greater knowledge and more complete practice of it” (*CCEO*, c. 40, §2); see SECOND VATICAN COUNCIL, Decree on the Catholic Eastern Churches *Orientalium Ecclesiarum*, 21 November 1964, no. 4, in *AAS*, 57 (1965), 77-78, English translation in *FLANNERY*, 443.

or provinces for the rite of the candidate and the candidate is destined for one of these houses or provinces. A cleric²⁸⁴ ascribed to an eparchy cannot licitly enter a novitiate without consulting the eparchial bishop or if the eparchial bishop objects his entrance to the novitiate. Parents, i.e., widows or widowers, who raise and educate children, or children who are obligated to assist their father, mother, or grandparents in great need, illicitly enter a novitiate unless the religious institute provides otherwise.²⁸⁵

The major superiors who admit a candidate to the novitiate must make certain of the current and foreseeable physical, psychological and emotional suitability,²⁸⁶ and the full freedom of a candidate in choosing the religious state. More specifically, it is to be determined that the candidate has the sufficient capacity to lead the consecrated life, especially the monastic life.²⁸⁷

In order that the novitiate be valid, it must be performed in the monastery *sui iuris* itself, or by decision of the superior, after consulting the council, in another monastery *sui iuris* of the same confederation, or in the house in which the novitiate is located.²⁸⁸ The novitiate must last for three full and continuous years, without any interruption,²⁸⁹ and not be extended beyond three years. However, in monasteries in which a temporary profession

²⁸⁴ “By reason of sacred ordination clerics are distinguished as bishops, presbyters and deacons” (CCEO, c. 325).

²⁸⁵ See CCEO, c. 452, §2. This impediment is based on natural law. See LODA, “L’ammissione nel monastero *sui iuris*,” 65.

²⁸⁶ See SALACHAS, “La vita monastica e religiosa,” 117.

CCEO, canon 453, §2 highlights that candidate to novitiate is to have certain personal qualities necessary, though not mandatory, for admission to the novitiate. See LODA, “L’ammissione nel monastero *sui iuris*,” 66.

²⁸⁷ See PUJOL, *La vita religiosa orientale*, 211.

²⁸⁸ See CCEO, cc. 456, §2, 522, §1.

²⁸⁹ “Continuous time is understood as that which undergoes no interruption” (CCEO, c. 1544, §1).

precedes perpetual profession, and in orders and congregations, one full and continuous year is acceptable.²⁹⁰ If there is a doubt as to the suitability of a novice, it is possible to extend the time of novitiate in accord with the norms of the typicon or the statutes, but not beyond one year.²⁹¹ The extension of the duration of novitiate is not required for validity to make religious profession by the novice in question.

The formation of novices must be conducted under the leadership of a director,²⁹² who is distinguished by prudence, charity, piety, knowledge and experience in the observance of consecrated life.²⁹³ The novitiate is a preparation for religious profession, which embraces the entire life and activity of the consecrated member.²⁹⁴ The novice must be educated on the typicon of the monastery, the status of the order or congregation respectively, pious meditation and assiduous prayer.²⁹⁵ The novice must also thoroughly

²⁹⁰ See *CCEO*, cc. 457, §§1-3, 523, §1.

²⁹¹ *CCEO*, cc. 461, §2, 523, §2. According to *Postquam apostolicis litteris*, the extension of the novitiate is permitted for a maximum of six months solely within orders and congregations. No extension of the novitiate period can be granted in a monastery, based on the rationale that the novitiate in a monastery lasts a full and uninterrupted duration of three years. Throughout this period, the suitability of an individual aspiring to embrace monastic life must be established. In a monastery, if an individual, who is to make religious profession, has not yet attained the age of twenty-one, he or she is required to make a temporary profession, which is valid until he or she reaches the age of twenty-one. Alternatively, if the individual who is to make religious profession has less than six months until he or she reaches the age of twenty-one, the superior of the monastery *sui iuris* must determine whether to extend the novitiate for this duration or to allow the individual to make a temporary profession until he or she reaches the age of twenty-one. See *PA*, cc. 105, §2, 108, in *AAS*, 44 (1952), 95-96, POSPISHIL, *The Law on Persons*, 280-282.

²⁹² See *PI*, nos. 81-82, in *AAS*, 82 (1990), 519, *Origins*, 19 (1989-1990), 694.

²⁹³ See *CCEO*, cc. 458, §1, 524, §1.

²⁹⁴ See PUJOL, *La vita religiosa orientale*, 228.

²⁹⁵ “Without prayer the religious life loses its meaning and does not attain its objective” (JOHN PAUL II, Allocation to Cardinals and Bishops of the Congregation for Religious and Secular Institutes, 7 March 1980, no. 1, in *AAS*, 72 (1980), 208, English translation in *CLD*, vol. 9, 440).

“Do not forget the testimony of history, namely, maintained faithfulness to prayer or its neglect is, as it were, the reflection of the vitality or the decadence of the religious life” (PAUL VI, *Evangelica testificatio*, no. 42, in *AAS*, 63 (1971), 519, *CLD*, vol. 7, 443).

learn everything that pertains to the vows of consecrated life, to engage in suitable exercises to root out vices in order to curb temptations of the soul and to acquire virtues.²⁹⁶

1.4.3 — Religious Profession

Once the novitiate has been completed and the candidate has been judged suitable to lead a consecrated life, he or she is permitted to make their religious profession, which consists of the three perpetual vows. The first vow is of obedience:

By their profession of obedience, religious offer the full dedication of their own wills as a sacrifice of themselves to God, and by this means they are united more permanently and securely with God's saving will. [...] Religious, therefore, should be humbly obedient to their superiors, in a spirit of faith and of love for God's will, and in accordance with their rules and constitutions. [...] religious obedience leads it to maturity by extending the freedom of the sons of God.²⁹⁷

In vow of obedience the religious learns the will of God in human realities through community recognition and personal dialogue with his or her superiors.²⁹⁸

The second vow is chastity:

Chastity "for the sake of the kingdom of heaven" (Mt. 19:22), which religious profess, must be esteemed an exceptional gift of grace. It uniquely frees the heart of man (cf. 1 Cor. 7:32-35), so that he becomes more fervent in love for God and for all men. For this reason it is a special symbol of heavenly benefits, and for religious it is a most effective means of dedicating themselves wholeheartedly to the divine service and the works of the apostolate.²⁹⁹

The vow of chastity is a unique union of life – a life of strong *koinonia* with Christ and other members of the religious institute where the member lives and serves.

The third vow is poverty:

²⁹⁶ See *CCEO*, cc. 459, §1, 525, §1.

During the novitiate a candidate to consecrated life is to determine the presence or absence of a specific divine calling through an inner congruence that involves aligning the heart and mind with the specific spirit and lifestyle of the religious institute. Cf. *LODA*, "L'ammissione nel monastero *sui iuris*," 68.

²⁹⁷ *PC*, no. 14, in *AAS*, 58 (1966), 708-709, *FLANNERY*, 619.

²⁹⁸ Cf. *EUART*, "Religious Institutes," 116.

²⁹⁹ *PC*, no. 112, in *AAS*, 58 (1966), 707, *FLANNERY*, 617.

Voluntary poverty, in the footsteps of Christ, is a symbol of Christ which is much esteemed, especially nowadays. Religious should cultivate it diligently and, if needs be, express it in new forms. It enables them to share in the poverty of Christ who for our sake became poor, though he was rich, so that we might become rich through his poverty.³⁰⁰

In the vow of poverty the member imitates the poor Jesus. Poverty implies a total dependence on God and an absolute trust in divine providence.³⁰¹ By the vow of poverty the member voluntarily renounces all property and the right to possess temporal goods as his or her own and to dispose of them independently.³⁰²

1.4.3.1 — Monastery

The monastic profession is a consecration, i.e., *consecratio monastica*,³⁰³ for the perfect following of Christ. The *CCEO* uses and identifies the term *consecration*³⁰⁴ with *monastic profession*³⁰⁵ to underline that authentic Eastern tradition considers the monastic state as linked to a total consecration.³⁰⁶ The Eastern Code does not make a distinction

³⁰⁰ *PC*, no. 113, in *AAS*, 58 (1966), 708, *FLANNERY*, 618.

³⁰¹ See SIBI, “Religious community,” 179-180.

³⁰² See EUART, “Religious Institutes,” 110.

Canonical effects, according to *CCEO*, canon 534, of making profession in the congregation, i.e., vow of poverty, are such that a member is not deprived of ownership of his or her property or the ability to acquire more property, nevertheless, the member is to follow the particular law of his or her congregation which can oblige, him or her, to renounce their properties. See NEDUNGATT, *A Guide to the Eastern Code*, 384.

³⁰³ See *Nuntia*, 16 (1983), 46.

Making monastic profession in the strict sense is a bilateral juridical-canonical act, which determines the creation of rights and obligations between a member on the one hand and the monastery *sui iuris* on the other, linked by a bond of reciprocity (synallagma which explains the reciprocal relationships). It could be considered a manifestation of will that constitutes the conclusive (perfective) moment of the legal transaction of admission to the monastery *sui iuris*. Cf. V. PARLATO, *La professione religiosa*, Milan, A. Giuffrè, 1979, 119-120.

³⁰⁴ “In Catholic tradition, Eastern monastic profession is generally understood as a consecration. The traditional understanding or recognition of the rite of monastic profession as a consecration may be the reason behind this. The main reason for this recognition is the following of consecratory rituals in the rite of monastic profession. [...] In the Eastern Churches, consecration is effected by the prayer together with the sign of the cross, the imposition of hands or the anointing with holy oils” (TRESA, “The Notion of *Consecration* and *Profession* – Part II,” 246).

³⁰⁵ See BEYER, “De vita consecrata in iure utriusque Codicis orientalis et occidentalis,” 293.

³⁰⁶ See SALACHAS, *La vita consacrata*, 130-131.

between solemn and simple profession³⁰⁷ in outlining the monastic consecration. It only uses the terms: *definitive* or *temporary* profession.³⁰⁸

§1. The monastic state is definitively assumed by perpetual profession, which includes the three perpetual vows of obedience, chastity, and poverty.

§2. In making profession, the prescripts of the typicon and the liturgical books are to be observed.³⁰⁹

The monastic state is a consecration of the entire person; the total self-giving as a sacrifice offered to God, and becomes an uninterrupted worship of God in charity.³¹⁰ With monastic profession the person is united by God with the Church, in the image of Christ's indefectible nuptial union with the Church.³¹¹ The person is consecrated and strengthened by the special grace of his or her state.³¹²

When profession is made, the regulations of the typicon and liturgical books³¹³ must be observed:

...the Church sets it forth liturgically also as a state of consecration to God... asking aid and grace for them from God in public prayer, commends them to God and bestows on them a spiritual blessing, associating their self-offering with the sacrifice of the Eucharist.³¹⁴

³⁰⁷ See *Nuntia*, 4 (1977), 5-6; cf. A. GUTIÉRREZ, "The New Code of Canon Law and the Internal Law of Institutes of Consecrated Life," in *Consecrated Life*, 9 (1983), 86.

³⁰⁸ "Distinctio inter sollemnem et simplicem professionem religiosam in toto schemate derelicta est et non nisi de definitiva vel temporanea professione sermo fit" (*Nuntia*, 11 (1980), 9-10); see TRESA, "The Notion of *Consecration* and *Profession* – Part II," 241.

³⁰⁹ *CCEO*, c. 462, §§1-2.

³¹⁰ See BEYER, "De vita consecrata in iure utriusque Codicis orientalis et occidentalis," 294.

³¹¹ "Spiritually and interiorly it is God who consecrates, but that the juridical and ecclesiastical reality of consecration comes about by profession" (TRESA, "The Notion of *Consecration* and *Profession* – Part II," 238).

³¹² See SALACHAS, *La vita consacrata*, 132.

³¹³ "Religious profession also indicates the liturgical act of assuming the obligation to practice the evangelical counsels and the official public act accepted by the legitimate authority" (TRESA, "The Notion of *Consecration* and *Profession* – Part II," 238).

³¹⁴ *LG*, no. 45, in *AAS*, 57 (1965), 52, *FLANNERY*, 406.

CCEO, canon 463 recognizes different degrees of monastic profession, including those of a temporary nature. Nevertheless, the existence of the different degrees or levels of monastic profession does not, in any manner, reduce the legal force and juridic effects of monastic profession.³¹⁵ The canon regulates the juridic effects of both perpetual and temporary profession.³¹⁶

For validity of perpetual monastic profession, *CCEO*, canons 464 and 527 require that the novitiate be validly completed, and that the novice be admitted to profession by the superior of his or her monastery *sui iuris* with the consent of the superior's council to which the novice is subject.³¹⁷ These canons also require the profession be received by the same superior in person or by another, and must be expressed and made without force, grave fear or fraud, like any juridic act.³¹⁸ In the typicon, other requirements may be specified for validity in the religious profession, which must be fulfilled. The superior must ascertain, using appropriate means, the suitability and full freedom of the candidate in choosing the monastic state.³¹⁹ *CCEO*, canon 465 acknowledges temporary profession in the monastery, which precedes perpetual profession according to the typicon.³²⁰ Temporary profession can be repeated several times, but shall not be shorter than three years, nor

³¹⁵ See J. ABBASS, "Degrees of Monastic Profession," in *Practical Comm*, vol. 1, 911.

³¹⁶ See SALACHAS, *La vita consacrata*, 133.

³¹⁷ "The ordinary minister of the monastic consecration is not a bishop, but a presbyter and, for monks, usually the superior of the monastery" (TRESA, "The Notion of *Consecration* and *Profession* – Part II," 247).

³¹⁸ Cf. *CCEO*, c. 932.

The monastic profession must be express, that is, not only external, visible, or tangible, but also manifested in words, in writing, or signs that effectively express the will of the professed through the formula of profession. See LODA, "L'ammissione nel monastero *sui iuris*," 74.

³¹⁹ See SALACHAS, *La vita consacrata*, 133.

³²⁰ See *Nuntia*, 6 (1978), 47-48.

longer than six.³²¹ Recourse must be made to the Apostolic See to extend the duration of temporary profession beyond the sixth year.³²² Having made perpetual profession, a member loses by law whatever offices he or she may have held, as well as his own eparchy, and is joined to “the monastery with the full effects of law.”³²³

1.4.3.2 — Orders and Congregations

In orders and congregations, the temporary profession, with the three vows of obedience, chastity and poverty, shall be made for the time determined in the statutes,³²⁴ and has to be repeated several times in accordance with the statutes, but in such a manner that taken together the time shall not be shorter than three nor longer than six years.³²⁵ Otherwise, recourse must be made to the Apostolic See to extend the duration of temporary profession beyond the sixth year.³²⁶

The *CCEO* does not provide a norm for the minimum age for the validity of admission to temporary profession. However, it requires that the novitiate has been validly completed, which cannot begin before the age of seventeen, and lasts at least one year. Therefore, for a temporary profession, the candidate is required to be at least eighteen years of age.³²⁷ The temporary profession must be renewed on the same day of the year when it was first made, so that the religious is never without vows.³²⁸

³²¹ See *CCEO*, c. 526, §§1-2.

³²² See NEDUNGATT, *The Spirit of the Eastern Code*, 121.

³²³ *CCEO*, c. 469; cf. *CCEO*, c. 531. “Perpetual monastic profession renders acts that are contrary to the vows invalid if the acts can be nullified” (*CCEO*, c. 466).

³²⁴ See ABBASS, *The Consecrated Life*, 347.

³²⁵ See *CCEO*, c. 526, §§1-2.

³²⁶ See NEDUNGATT, *The Spirit of the Eastern Code*, 121.

³²⁷ See SALACHAS, *La vita consacrata*, 227-228.

³²⁸ See PUJOL, *La vita religiosa orientale*, 288.

Admitting a novice to temporary profession belongs to the competent major superior according to the statutes; provincial superior, or if there are no provinces – the superior general with the consent of his or her council. This right cannot be delegated to other members of religious institutes. The major superior, or his or her representative, receives profession of the novice, which takes place within a liturgical celebration according to the regulations of the statutes³²⁹ which must be strictly observed.³³⁰ Religious profession is a juridic act with very serious juridical consequences, both for the religious and for the religious institute,³³¹ because, “[b]y perpetual profession, a member definitively assumes the religious state, loses his or her own eparchy, and is fully aggregated to the order or congregation.”³³² If the person is a cleric, he as a member is ascribed to an order or congregation.³³³

1.4.4 — Formation of Members

Integral formation of members in religious institutes is an intrinsic demand of religious consecration,³³⁴ in helping the members to reach spiritual and personal

³²⁹ See *CCEO*, c. 535, §1.

³³⁰ See SALACHAS, *La vita consacrata*, 228-229.

³³¹ See PUJOL, *La vita religiosa orientale*, 288-289; see also TRESA, “The Notion of *Consecration* and *Profession* – Part II,” 242-251.

³³² *CCEO*, c. 531; see ABBASS, *The Consecrated Life*, 358.

³³³ Cf. *CCEO*, cc. 357, §1, 358.

³³⁴ See CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETY OF APOSTOLIC LIFE, Instruction on Consecrated Life in the Third Millennium *Starting Afresh from Christ*, 19 May 2002, Vatican City, Libreria editrice Vaticana (= *Starting Afresh from Christ*), English translation in *Origins*, 32 (2002-2003), 136.

maturity.³³⁵ The formation of members³³⁶ promotes learning the spiritual heritage of his or her own religious community and contributes to the constant harmonious growth of religious persons in their vocation,³³⁷ which leads to vitality and discipline in consecrated life.³³⁸

The religious institute is obliged, as determined in the typicon or the statutes, to pursue an efficient formation for its members at all stages,³³⁹ so that they may lead a disciplined and appropriate life according to the charism and mission of the founders of the religious institute.³⁴⁰

CCEO, canon 471, §1 (cf. *CCEO*, canon 536, §1) pays particular attention to providing the fundamental principles in the formation of religious members:

The manner of formation of members is to be determined in the typicon in such a way that they are continually motivated to pursue more fully a life of holiness and also that their natural abilities are developed through the study of sacred doctrine and the acquisition of human culture according to the needs of the times, and that they thereby become more prepared for the exercise of the arts and works that are legitimately undertaken by the monastery.

The Church demands that each religious institute (monastery, order and congregation) fulfill their duty in that all members, even those who live a contemplative life, must continue with formation adapted to the character of the institute in order to discover, assimilate and deepen the spirituality in which their religious identity consists.³⁴¹

³³⁵ See SIBI, “Religious community,” 173; see also J. GIALLANZA, “Continuing Formation: Perspectives from *Vita consecrata*,” in *RfR*, 55 (1997), 474.

³³⁶ “Since the initiative for religious consecration is in the call of God, it follows that God himself, working through the Holy Spirit of Jesus, is the first and principal agent in the formation of the religious” (*CTRL*, no. 47, in *CLD*, vol. 10, 64).

³³⁷ Cf. M.R.A. AWITI, “Formation During the Period of Temporary Vows according to the 1983 Code and the Subsequent Holy See Documents,” in *StC*, 51 (2017), 400.

³³⁸ See *VC*, no. 69, in *AAS*, 88 (1996), 444, *Origins*, 25 (1995-1996), 704.

³³⁹ See *PI*, no. 42, in *AAS*, 82 (1990), 499, *Origins*, 19 (1989-1990), 688.

³⁴⁰ See NEDUNGATT, *The Spirit of the Eastern Code*, 125; see also E. McDONOUGH, “Charisms and Religious Life,” in *RfR*, 52 (1993), 647.

³⁴¹ See *PI*, no. 6, in *AAS*, 82 (1990), 475, *Origins*, 19 (1989-1990), 679.

This formation should generally be extended over the entire period of temporary vows,³⁴² so that the religious live a worthy consecrated life, aimed at achieving evangelical perfection. This is the proper purpose of formation.³⁴³ The religious institute is responsible for determining each stage and grade of formation. The institute is responsible to determine the concept, the regulation and the duration of the spiritual, ascetic and doctrinal, continuous and permanent formation, according to its mission, demands, and according to the needs of the times.³⁴⁴

The formation of members of religious institutes should foster the adherence of the members to the religious discipline of the community.³⁴⁵ It is to lead members to a constant pursuit of holiness of life strongly based on the Gospel, which requires a living testimony to the virtues and aspects of the imitation of Christ.³⁴⁶ It is to nurture the conscientious study of the very rich liturgical and spiritual heritage of the Eastern Churches, where the eucharistic celebration, “source of the Church’s life and pledge of future glory,”³⁴⁷ holds a central place in the life of the Church. It has to train the members through sacred theology and other historical disciplines with an ecumenical aspect,³⁴⁸ especially involving those

³⁴² See PAUL VI, Apostolic Letter *motu proprio Ecclesiae sanctae*, II, Norms for the Implementation of the Decree *Perfectae caritatis* of the Second Vatican Council, 6 August 1966, nos. 35-36, in *AAS*, 58 (1966), 781, English translation in *CLD*, vol. 6, 291.

³⁴³ See PUJOL, *La vita religiosa orientale*, 319.

³⁴⁴ See *Starting Afresh from Christ, Origins*, 32 (2002-2003), 136.

³⁴⁵ See S.A. KUTHODIPUTHENPURAYIL, *The Formation of Religious Priests according to CCEO: With Special Reference to the Little Flower Congregation*, JCD thesis, Rome, Pontificum Institutum Orientale, 2002, 36-40.

³⁴⁶ See *Starting Afresh from Christ, Origins*, 32 (2002-2003), 137.

³⁴⁷ *UR*, no. 15, in *AAS*, 57 (1965), 101-102, *FLANNERY*, 465.

³⁴⁸ Cf. *CCEO*, c. 906.

aspects which concern relations with separated brethren within the Catholic Church.³⁴⁹ It has to foster and create progress in the authentic search for full unity among Christians.³⁵⁰

In addition, the formation of monks destined for sacred orders must be done in accord with the formation program for clerics mentioned in can. 330, in the monastery itself, if it has a place of studies set up according to can. 340 §1, or under the guidance of an authorized moderator in another seminary or institute of higher studies approved by ecclesiastical authority.³⁵¹

The plan for the formation of religious members, keeping in mind the tradition of one's own Church *sui iuris*, must include, among other things, special norms regarding the personal-human, spiritual, doctrinal, intellectual, philosophical, cultural³⁵² and pastoral formation of members, especially those who prepare for sacred order,³⁵³ in addition to individual discipline.³⁵⁴

This formation must certainly be done according to the religious institute's own way of being and according to the norms of the Second Vatican Council.³⁵⁵ Because of the intrinsic unity of the Catholic priesthood, this priestly formation is necessary for all priests,

³⁴⁹ See *UR*, no. 10, in *AAS*, 57 (1965), 99, *FLANNERY*, 461-462.

³⁵⁰ See PONTIFICAL COUNCIL FOR PROMOTING CHRISTIAN UNITY, The Ecumenical Dimension in the Formation of Those Engaged in Pastoral Work *La recherche de l'unité*, 25 March 1993, no. 6, in *AAS*, 85 (1993), 1041, English translation <http://www.christianunity.va/content/unitacristiani/en/documenti/testo-in-inglese.html> (12 November 2025).

³⁵¹ *CCEO*, c. 471, §2; cf. *CCEO*, c. 536, §2.

³⁵² See SYNOD OF BISHOPS, IX ORDINARY GENERAL ASSEMBLY, *The Consecrated Life and Its Role in the Church and in the World*, 2-9 October 1994, no. 90, Libreria editrice Vaticana, 1994, English translation in *Origins*, 24 (1994), 129.

³⁵³ See JOHN PAUL II, Post-Synodal Apostolic Exhortation on the Formation of Priests in the Circumstances of the Present Day *Pastores dabo vobis*, 25 March 1992, nos. 42-69, in *AAS*, 84 (1992), 729-778, English translation in *Origins*, 21 (1991-1992), 738-750; see also CONGREGATION FOR CATHOLIC EDUCATION, Guidelines for the Use of Psychology in the Admission and Formation of Candidates for the Priesthood, 29 June 2008, English translation https://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20080628_orientamenti_en.html (12 November 2025).

³⁵⁴ See CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETY OF APOSTOLIC LIFE, Instruction on Inter-Institute Collaboration for Formation *Attenta alle condizioni*, 8 December 1998, in *Enchiridion Vaticanum, Documenti ufficiali della Santa Sede 1998*, vol. 17, Bologna, Edizione Dehoniane Bologna, 2000, 1339-1373; see also NEDUNGATT, *The Spirit of the Eastern Code*, 125.

³⁵⁵ Cf. *CTRL*, nos. 47-48, in *CLD*, vol. 10, 64-65.

diocesan/eparchial and religious and of every rite. A special program of priestly training is to be implemented by each country or rite.³⁵⁶

Conclusion

This chapter was focused principally on the norms included in the *CCEO* under Title XII, specifically concentrating on the religious institutes (monasteries, orders and congregations) demonstrating that the Eastern Code corresponds, preserves and adapts to the monastic tradition of the East, approved by Saints Basil the Great, Pachomius, Antony and others. This venerable tradition is admirably confirmed, promoted and supported by the Second Vatican Council.³⁵⁷ The Eastern Code gives priority to monastic life. It continues to distinguish and give significance to orders and congregations because they form a majority of religious in the Eastern Churches.

In this chapter, a detailed account of *CCEO*, canon 410 was undertaken, consisting of a description of the religious state in the Eastern Church and the place it occupies in consecrated life. This covers monasteries, orders and congregations in the life of the Church. An analysis of canons in the general norms demonstrated that the *CCEO* does accept in principle, and acknowledge, the necessary autonomy of the Eastern religious institutes in their proper internal discipline. That is to say, religious institutes have an innate right to preserve their own character and purpose through internal discipline and governance. Furthermore, the legislator, with great enthusiasm for the religious institutes

³⁵⁶ See SECOND VATICAN COUNCIL, Decree on the Training of Priests *Optatam totius*, 28 October 1965, Introduction-no. 1, in *AAS*, 58 (1966), 713-714, English translation in *FLANNERY*, 707-708.

³⁵⁷ See *Nuntia*, 11 (1980), 3.

of the Eastern religious state, instructs patriarchs and bishops to foster and promote these institutes. At the same time, the legislator excludes bishops from the internal operations of these institutes. Finally, the different stages in the consecrated life were delineated, from the beginning to the culmination of full consecration in the monastic perpetual profession through the three vows of obedience, chastity and poverty. Monastic profession, in itself, does not make a religious person perfect; nevertheless, it is through ongoing formation that the member may find the path that leads to holiness in service to the Kingdom of God, for the growth of the Church and for the salvation of the world as a sign of the foretelling of heavenly glory.

CHAPTER TWO: SUBSTANTIVE LAW ON EXTRA-JUDICIAL DISMISSAL OF MEMBER FROM RELIGIOUS INSTITUTE

Introduction

The *CCEO* recognizes distinct reasons for the possible dismissal of a member from a religious institute. The obligation of dismissal is exercised only in terms of those members who do not observe the canonical provisions and whose conduct endangers both the common and the personal good of the church community.¹ According to canon law, not every violation of the law carries dismissal.² Dismissal applies only to a violation of the law, which is defined as an offense against a religious profession or a delict, and only if the causes for the dismissal are grave, culpable and juridically proven.³ Furthermore, dismissal applies if it is provided for in canon law, as well as the particular law of each religious institute. All this is carried out with one goal in mind – to protect the rights of all concerned, including the offenders. The application of administrative measures – for dismissal from religious state – belongs to the competent church authority, who must proceed according to the norms envisaged in the *CCEO* regarding dismissal of religious members. This includes the norms of the current penal law of the Church, and if the case warrants it, the norms pertaining to the proper law of the Apostolic See.

¹ See ROSINSKI, “Mercy and Due Process in Religious Institutes,” 583.

² See T.J. GREEN, “Penal Law: An Eastern Perspective (CCEO 1401-1487),” in *Studies in Church Law*, 8 (2012), 100.

³ See *CCEO*, c. 500, §2, 1°.

One who totally dedicates himself or herself to consecrated life,⁴ whether superior or subject, is obliged to faithfully observe and maintain the vows which he or she has professed, as well as arrange his or her life according to the applicable typicon or statutes. The religious is bound to faithfully observe canon law following the intention and determinations of the founder, thus striving for perfection in his or her state.⁵ However, despite this commitment made through professed vows, there are cases in which a religious, as demonstrated by his or her behaviour, completely contradicts the state of consecrated life. The Church, which supports the well-being and discipline of the church community, and in particular, of the religious institute, including the good of the religious member who is guilty of a delict, bears the responsibility of determining and enforcing the norms of dismissal from the religious institute.⁶

This chapter provides an investigation of substantive law, as outlined in the *CCEO*, which pertains to the extra-judicial dismissal of a religious member from the monastery, order or congregation. Within the chapter, where reference is made only to the dismissal of a member from the monastery, equal adherence to substantive law is applied to members dismissed from a monastery *sui iuris*, as well as members dismissed from a monastic federation, unless the nature of the matter is expressly evident or a clear distinction exists. This chapter consists of four sections, namely: Dismissal of a Religious Member, Dismissal of a Religious Member for *graviora delicta*, Authority to Dismiss Religious from Religious Institutes and Effects of Dismissal.

⁴ See *CCEO*, c. 410.

⁵ See *CCEO*, c. 426.

⁶ Cf. J.C. KOZŁOWSKI, “Understanding the *ius vigens* of the Mandatory Dismissal Process,” in *J*, 75 (2015), 388.

2.1 — Dismissal of a Religious Member

Dismissal is a painful act experienced by both the individual and the superior who must carry it out. The grave causes for dismissal strike at the very heart of the life of an individual who has consecrated his or her life to God through the profession of public vows of obedience, chastity and poverty, professing to follow Christ more closely, and endeavouring to attain perfection in the function of charity in the service of the Kingdom of God.⁷

The *CIC* provides for three types of dismissal. The first, is dismissal *ipso facto*, when a member notoriously defects from the Catholic faith, or contracts marriage or attempts it, even merely civilly.⁸ Second is an obligatory dismissal,⁹ in which the superior must follow

⁷ See S. HOLLAND, “Canonical Dismissal from Institutes of Consecrated Life and Societies of Apostolic Life,” in *Studies in Church Law*, 2 (2006), 62.

⁸ See *CIC*, c. 694, §1.

⁹ “A member must be dismissed for the delicts mentioned in canons 1395, 1397, and 1398, unless in the delicts mentioned in canons 1395 §§2-3, and 1398 §1, the major superior decides that dismissal is not completely necessary and that correction of the member, restitution of justice, and reparation of scandal can be resolved sufficiently in another way” (FRANCIS, Apostolic Letter *motu proprio* Modifying Canon 695 §1 of the Code of Canon Law *Recognitum Librum VI*, 26 April 2022, in *AAS*, 114 (2022), 551-552, English translation *Code of Canon Law: Latin-English Edition, New English Translation*, fourth printing, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 2023, c. 695, §1). Pope Francis in his Apostolic Letter *motu proprio Recognitum Librum VI*, has altered canon 695, §1, which now is a higher law (*ius*) of the Latin Code.

The legislator imposes a mandatory dismissal on the member who, by his or her behaviour, demonstrates that he or she does not lead the life of a consecrated person, and who can no longer be recovered from this detrimental behaviour thus bringing infamy to the religious institute. The law states that the obligation required is to proceed with the intervention of the superior who must issue a decree of dismissal, i.e., the superior has no room for discretion. See N. THATTIL, “Distinct Motives for the Dismissal of Religious in *CIC* and *CCEO*,” in *Ius*, vol. 5, no. 2 (December 2014), 213.

If the superior does not carry out the order, he or she makes himself or herself responsible and culpable for the behaviour of the religious himself or herself, as well as for the loosening and relaxation of religious discipline and any resulting scandal. In particular, canonical admonitions are not required, because the legislator believes that in such cases a recovery of the subject to consecrated life is no longer conceivable. See V. DE PAOLIS, *La vita consacrata nella Chiesa*, rev. ed., Venice, Marcianum Press, 2011, 578-579.

CIC, canon 695, §1 transfers the criminal cases envisaged for clerics to all religious, i.e., priest, brother, or women religious. See S.L. HOLLAND, “Chapter VI Separation of Members from the Institutes [cc. 684-704],” in *CLSA Comm*, 865.

the procedure of dismissal. This, in fact, is a much more expeditious and rapid procedure¹⁰ when a member commits the delict mentioned in *CIC*, canons 1397, 1398 and 1395. Finally, there is facultative dismissal, wherein the law has left it to the discretion of the competent superior to start the process of dismissal.¹¹

The *CCEO*, in addition to the expulsion of the religious member from the religious institute, regulates two types of dismissal: *ipso iure* and facultative. The Eastern law does not provide for obligatory dismissal.¹²

2.1.1 — *Ipso iure* Dismissal of Religious Member

A member with temporary or perpetual profession is dismissed *ipso iure* from his or her religious institute (monastery, or order or congregation) if they commit these delicts,¹³ even if the religious member who is guilty of these delicts is repentant. *CCEO*, canon 497, §1 states:

§1. A member must be considered to be dismissed from a monastery by the law itself, who:

1° has publicly rejected the Catholic faith;

2° has celebrated marriage or attempted it, even only civilly.

The gravity of such behaviour is no less serious for religious than it is for priests. The need to punish such delicts with particular rigour applies more so and above all in today's society, for the commitment of such delict is permissive and undisciplined, and it is enormously scandalous as it relates to the behaviour of people of the Church, be they priests or religious. *CIC*, canon 695, §1 uses almost verbatim the expressions of *CIC*, canon 1341, which states that the ordinary must initiate whether the judicial or administrative process to impose or declare a penalty, only when, having exhausted all the means at his disposal, both moral and juridical, he has ascertained that it is not possible to ensure that justice be sufficiently restored, nor that the offender be reformed, nor that the scandal be repaired except through the judicial or the administrative process. These criteria are valid only to this canon and not to all cases envisaged as mandatory dismissal. See PAOLIS, *La vita consacrata nella Chiesa*, 580-581.

¹⁰ See HOLLAND, "Canonical Dismissal," 65.

¹¹ See *CIC*, c. 696.

¹² See HOLLAND, "Canonical Dismissal," 62.

¹³ *Ipso iure* dismissal is effective from the moment any of the indicated in *CCEO*, canons 497, §1 and 551 circumstances occur. Cf. SÁNCHEZ-GIRÓN RENEDO, "La expulsión de un instituto religioso," 702.

The *ipso iure* dismissal has entered the legislation of the Church with the decree of the *Quum singulae*.¹⁴ The current legislation, canon 497, §1 contains essentially two delicts, i.e., against faith and against vow of chastity, by which a religious may be automatically dismissed from his or her institute: public abandonment of the Catholic faith, even if the member has not transferred to a non-Catholic Church or ecclesial community;¹⁵ and celebrating a canonical marriage, or even merely attempting to enter into a civil marriage.

2.1.1.1 — Delict Against Faith

The public abandonment of the Catholic faith is an act which is contrary to the full consecration of the religious state, and therefore, it is a very serious delict. This delict includes not only apostasy by which an individual totally repudiates the Christian faith, but also heresy and schism.¹⁶ It also concerns the individual who resolutely denies a truth which is believed by divine and Catholic faith,¹⁷ or who casts doubt, questions this truth,¹⁸ refuses to submit to the supreme authority of the Church, or repudiates communion with

¹⁴ Item contra quaedam delicta censetur veluti lata a iure poena expulsionis vel dimissionis. Quae delicta sunt:

- a) publica apostasia a Fide Catholica;
- b) apostasia ab Ordine vel Instituto, nisi intra tres menses Religiosus redierit;
- c) fuga a Monasterio, suscepta secum muliere;
- d) et multo magis contractus, ut aiunt, civilis, vel attentatio aut celebratio matrimonii, etiam validi, seu quando vota non sint solemnna vel non habeant solemnium effectum.

Sufficit in istis casibus, ut Superior Generalis vel Provincialis cum suo respectivo Consilio emittat sententiam declaratoriam facti.

(CONGREGATION FOR RELIGIOUS AND FOR THE SECULAR INSTITUTES, Decree on the Method to Be Observed in Writing the Sentence of Expulsion or Dismissal from Religious Orders and Institutes *Quum singulae*, 16 May 1911, no. 18, in *AAS*, 03 (1911), 237).

¹⁵ See SALACHAS, *La vita consacrata*, 181.

¹⁶ See *PA*, c. 197, §1, 1°, in *AAS*, 44 (1952), 117, POSPISHIL, *The Law on Persons*, 315.

¹⁷ See *CCEO*, c. 1436.

¹⁸ See G. GIROTTI and J. KHOURY, Commentary on c. 497, §1, in PINTO, *Commento CCEO*, 409.

the Catholic faithful.¹⁹ The traditional understanding of the Catholic faith includes the elements of actual and visible communion.²⁰

Clemente Pujol states that legal logic requires the inclusion of the delicts of heresy and schism in the abandonment of the Catholic faith because the authority of God is denied, and the offender relies on their own opinion.²¹ *CCEO*, canon 598, §§1-2, sets forth the true doctrine of the Church in terms of what a person must believe:

§1. A person must believe with divine and Catholic faith all those things contained in the word of God written or handed down, that is, in the one deposit of faith entrusted to the Church, and at the same time proposed as divinely revealed either by the solemn magisterium of the Church or by its ordinary and universal magisterium, which is in fact manifested by the common adherence of the Christian faithful under the leadership of the sacred magisterium; therefore, all Christian faithful are bound to avoid any doctrines whatsoever contrary to them.

§2. Furthermore, each and every thing set forth definitively by the magisterium of the Church regarding teaching on faith and morals must be firmly accepted and held; namely those things required for the holy keeping and faithful exposition of the deposit of faith; therefore, anyone who rejects propositions that are to be held definitively sets himself against the teaching of the Catholic Church.

This canon obliges all the faithful to, “avoid any doctrines whatsoever contrary to them,” and to embrace the truths which must be believed *de fide divina et catholica*²² under the threat of canonical punishment.²³ All these delicts place the offender outside the Church,²⁴

¹⁹ Cf. *CCEO*, c. 1437.

²⁰ See THATTIL, “Distinct Motives for the Dismissal of Religious,” 211.

²¹ See PUJOL, *La vita religiosa orientale*, 379.

²² “A doctrine is *de fide divina et catholica* only when it has been infallibly declared by the Church to be revealed by God. Hence this term does not apply to doctrines which one knows to have been revealed by God, but which have not been declared by the Church to have been so revealed (*de fide divina*); nor to those which the Church has infallibly declared, but which she does not present formally as having been revealed (*de fide ecclesiastica*); nor to those which the Church teaches without exercising her infallible authority upon them” (T.L. BOUSCAREN, A.C. ELLIS, and F.N. KORTH, *Canon Law. A Text and Commentary*, 4th rev. ed., Milwaukee, WI, Bruce Pub. Co., 1966, 748).

“For a truth to be part of divine and catholic faith, two conditions must be present: 1) The truth must be contained in the written or orally transmitted Word of God and included in the deposit of faith entrusted to the Church; 2) The magisterium of the Church must present the truth to the faithful as a revealed truth” (E. TEJERO, Commentary on c. 750, in *CCLA*, 590).

²³ See NEDUNGATT, *A Guide to the Eastern Code*, 446.

²⁴ See ARTNER, “Disciplinary Measures,” 477.

and it is then illogical for anyone who is not inside the Church to continue to be in a religious institute, which requires the obedience of faith that is demonstrated in, “the full submission of his intellect and will to God,”²⁵ in order to achieve evangelical perfection.

One who denies a truth which must be believed with divine and Catholic faith,²⁶ or who calls it into doubt or who totally repudiates the Christian faith and does not retract it after having been legitimately warned, is subject to the law which prescribes that he or she is to be punished as a heretic or an apostate with an excommunication. Moreover, a cleric can be punished with other penalties, not excluding removal from the clerical state.²⁷ In addition, one who refuses to be held subject to the supreme authority of the Church or who refuses communion with the Christian faithful, or refuses to be subject to it, though legitimately admonished, and does not obey, is to be punished as a schismatic with an excommunication.²⁸

The *CCEO* emphasizes the fact that this violation must not only be notorious, as when there has been a judicial sentence rendered or a confession on the part of the subject, but also must be public and not merely internal.²⁹ That is, it is disclosed and spread with a

²⁵ SECOND VATICAN COUNCIL, Dogmatic Constitution on Divine Revelation *Dei Verbum*, 18 November 1965 (=DV), no. 5, in *AAS*, 58 (1966), 819, English translation in *FLANNERY*, 752.

²⁶ “Sacred Tradition and sacred Scripture make up a single sacred deposit of the Word of God, which is entrusted to the Church. By adhering to it the entire holy people, united to its pastors, remains always faithful to the teaching of the apostles, to the brotherhood... in maintaining, practicing and professing the faith that has been handed on there should be a remarkable harmony between the bishops and the faithful. [...] It is clear, therefore, that, in the supremely wise arrangement of God, sacred Tradition, sacred Scripture and the Magisterium of the Church are so connected and associated that one of them cannot stand without the others. Working together, each in its own way under the action of the one Holy Spirit, they all contribute effectively to the salvation of the souls” (DV, no. 10, in *AAS*, 58 (1966), 822, *FLANNERY*, 755-756).

²⁷ See *CCEO*, c. 1436, §1.

²⁸ See *CCEO*, c. 1437.

²⁹ See PUJOL, *La vita religiosa orientale*, 379.

some reaction among the people, even if the offender has not transferred to another religion, Church or ecclesial community.³⁰

2.1.1.2 — Delict Against Vow of Chastity

The very serious delict against the vow of chastity occurs when a member enters into a marriage, or attempts it, even if only civilly. The law foresees that this delict can occur in three ways. First, a religious who, having professed a temporary profession, enters into a marriage with a capable person. In this case, the marriage will be valid but illicit. In such a case, the religious commits an offence against the vow of chastity, for in accordance with *CCEO*, canon 1453, §6, the delict is committed by a religious who has taken a public, perpetual vow of chastity. Second, if a religious who has professed their perpetual religious profession attempts marriage, since the public perpetual vow of chastity renders the person unable to marry, the marriage is invalid.³¹ Finally, in the case of a religious who contracts a civil marriage, such person neglects the prescribed canonical form involving the practical denial of the indissolubility of marriage.³² A grave delict has been committed against the doctrine of the Church regarding the sacramentality of marriage.³³

The public act of a religious celebrating a marriage, or attempting it, even if only civilly, is immediately ordered to the marriage bond which is a public condition that cannot coexist within the religious state. This delict concerns the lack of one of the essential elements of a religious state,³⁴ especially within monastic life, without which consecrated

³⁰ See SALACHAS, *La vita consacrata*, 182.

³¹ Cf. *CCEO*, c. 805.

³² Cf. *CCEO*, c. 776, §3.

³³ See *LG*, no. 11, in *AAS*, 57 (1965), 15-16, *FLANNERY*, 362.

³⁴ See THATTIL, “Distinct Motives for the Dismissal of Religious,” 212.

life is inconceivable and impossible.³⁵ By the profession of the vow of chastity, a member promises to live in perfect continence in the community of religious, which is contradictory to the married state.³⁶ For this reason, a member of a monastery, order or a congregation is required to be dismissed *ipso iure*.³⁷ If this delict were not punished, damage would be incurred to the Church and the understanding of Christian religion as well as create scandal for the faithful.³⁸

2.1.2 — Expulsion of a Religious Member

A religious member who has professed a temporary or perpetual profession – whatever the jurisdiction of the religious institute to which the religious belongs – who, in accordance with *CCEO*, canons 498 and 551, “is the cause of imminent and most grave external scandal or harm” to the religious institute, can be expelled at once from the monastery or religious house respectively.

³⁵ Abbass sees *ipso iure* dismissal as an *expiatory* penalty, i.e., automatic penalty. See J. ABBASS, “The Consecrated Life: ‘donum caritatis’ in the East and West,” in CONGREGATION FOR THE EASTERN CHURCHES, *Ius Ecclesiarum – vehiculum caritatis*, Libreria editrice Vaticana, 2004, 355-357.

Pujol states that the automatic dismissal from a religious institute is not a punishment of a sexual intercourse or concubinage, but rather the public act, with which a consecrated person intends to place himself or herself in a condition that the Church deems absolutely incompatible with the consecrated state, thus decreeing his or her dismissal by the fact itself. See PUJOL, *La vita religiosa orientale*, 380.

³⁶ See R.T. HREN, *La potestà del superior Maggiore tra diritto comune e diritto proprio*, JCD thesis, Analecta OSBM, Series II, Sectio I: Opera, vol. 56, Rome-Lviv, Misioner, 2017, 191.

³⁷ Here arises the question whether such member who attempts marriage may approach to Holy Eucharist. *CIC*, canon 1394, in §1 states that a cleric who attempts marriage, even if only civilly, incurs a *latae sententiae* suspension; §2 outlines that a religious in perpetual vows who is not a cleric – incurs a *latae sententiae* interdict. Hence it is forbidden to receive the Holy Eucharist. According to *CCEO*, canon 1408, those who are under a penalties, only when it is so pronounced by an ecclesiastical sentence or administrative decree, may be forbidden to receive the Holy Eucharist. See J.M. PAMPARA, “Characteristic Features of the Penal Law in the Code of Canons of the Eastern Churches,” in *Ius*, vol. 2, no. 2 (December 2011), 275-276.

³⁸ See PUJOL, *La vita religiosa orientale*, 380.

Canon law does not list which delicts or offences against religious profession are to be committed. The particular law of each religious institute is to establish delicts or offences that may be the cause of imminent and most grave external scandal or harm. Nevertheless, such delicts or offences do not necessarily have to occur simultaneously and may concern different religious members, i.e., the same delict or offence may involve more than one member. It is necessary that the scandal caused by the religious be imminent. Specifically, it must be: incumbent, near, very difficult to avoid, as well as morally certain, gravely serious, external,³⁹ and, “not only affect the members of the religious community but also have an impact beyond it.”⁴⁰ If the scandal is internal, to be considered as a delict or offence for immediate dismissal, it must occur under such conditions that its disclosure cannot be avoided. The act that causes the scandal may be carried out either inside or outside the religious house.⁴¹

Another case that gives rise to urgent expulsion occurs when the religious, with the his or her action, is the cause of imminent and very serious damage – physical or moral – to the religious institute to which he or she belongs.⁴² In other words, a member who totally dedicates him or herself to consecrated life through the profession of the evangelical counsels of obedience, chastity and poverty, engages in an act which is contrary to the vows or God’s commandments, which is unquestionably inappropriate to the vocation of consecrated life. The gravity of harm would increase if there were an intervention of

³⁹ For instance, external sin against chastity, i.e., a member chose a lifestyle, which is not correspondent to the consecrated life. See J.H. PROVOST, “Offenses against the Sixth Commandment. Toward a Canonical Interpretation of Canon 1395,” in *J*, 55 (1995), 634.

⁴⁰ THATTIL, “Distinct Motives for the Dismissal of Religious,” 222.

⁴¹ See PUJOL, *La vita religiosa orientale*, 380-381.

⁴² See HOLLAND, “Canonical Dismissal,” 79.

external elements, such as, the involvement of the justice system or even the press.⁴³ In such cases, the superior is to issue a decree of expulsion.

It must be noted, that the expelled member remains a monk or a member of an order or congregation, and is a subject of the religious superior bound by the obligations of the typicon or the statutes respectively, as expulsion itself does not entail a definitive dismissal from the religious institute.⁴⁴ Furthermore, this expulsion involves the prohibition of exercising sacred orders which the member has received. This prohibition, however, is not *suspensio a divinis*,⁴⁵ nor does it bear a penal sense; it is merely a precautionary measure.⁴⁶ The authority on which monasteries, orders or congregations depend upon can allow partial or total exercise of the order, e.g., to celebrate the Eucharist in private.⁴⁷ It is for the president of a monastic confederation, or the superior of the monastery *sui iuris*, to decide if it is necessary to initiate the process of dismissal in accordance with the law,⁴⁸ or to refer the matter to the authority to which the monastery is subject;⁴⁹ the Holy See, the patriarch or the eparchial bishop.⁵⁰ If the religious belongs to an order or congregation, the superior general is competent to render the judgment.⁵¹

⁴³ See PUJOL, *La vita religiosa orientale*, 381.

⁴⁴ See SALACHAS, *La vita consacrata*, 183.

⁴⁵ *Suspensio a divinis* is the suspension from divine things, i.e., from every act of the power of orders, whether one has obtained it from ordination or through privilege. Cf. *CIC/17*, c. 2279, §2, 2°; see *CCEO*, c. 1432.

⁴⁶ See W.H. WOESTMAN, "Restricting the Right to Celebrate the Eucharist," in *StC*, 29 (1995), 173.

⁴⁷ See PUJOL, *La vita religiosa orientale*, 381-382.

⁴⁸ See J. ABBASS, "*Ipsa Iure* Dismissal and Expulsion in Orders and Congregations," in *Practical Comm*, vol. 1, 1025.

⁴⁹ See *CCEO*, c. 498, §2.

⁵⁰ See THATIL, "Distinct Motives for the Dismissal of Religious," 223.

⁵¹ Cf. *CCEO*, c. 553.

2.1.3 — Dismissal of a Religious Member for Illegitimate Absence

A member who dedicates his or her life to the religious state makes a commitment to live communally.⁵² By its very nature, this manner of living is characterized by a mode of cohesion,⁵³ which is the definitive form of existence at the ecclesiastical institutional level.⁵⁴ An illegitimate absence from the community affects, not only the religious institute, but the entire Church, therefore, the legislator is to create a juridical regulation which takes into account the harm that could permeate the entire Church and the protection of the Church's common good. The illegitimate absence of a religious member, therefore, must be combined with the intention to evade the authority of the superior, which is described as an act of disobedience.⁵⁵

CCEO, canon 495 (cf. *CCEO*, canon 550) states that illegitimate absence from the religious institute entails punishment⁵⁶ which may include dismissal from the religious institute:

A member who, after making profession, has left the monastery illegitimately must return to the monastery without delay. The superiors must solicitously seek out the member and, if he or she returns moved by sincere penance, receive the member back; otherwise, the member is to be punished or even dismissed in accord with the norm of law.

⁵² “Religious consecration establishes a particular communion between religious and God and, in Him, between the members of the same institute. This is the basic element in the unity of an institute. A shared tradition, common works, well-considered structures, pooled resources, common constitutions and a single spirit can all help to build up and strengthen unity” (*CTRL*, no. 18, in *CLD*, vol. 10, 50-51).

⁵³ Pope Francis highlights that “[l]ife in community is an essential element of religious life, and “religious are to live in their own religious house and are not to be absent from it except with the permission of their superior” (Can. 665 §1 CIC)” (FRANCIS, Apostolic Letter *motu proprio* which Provides for the Modification of Several Norms of the Code of Canon Law *Communis vita*, 19 March 2019, in *AAS*, 111 (2019), 483, in *Communicationes*, 51 (2019), 15).

⁵⁴ Cf. *CCEO*, c. 410.

⁵⁵ See SALACHAS, *La vita consacrata*, 179.

⁵⁶ The *coetus studiorum* responsible for drafting the canons on delicts and penalties maintained that the transgressions of the law regulating religious life shall not be considered a delict. See *Nuntia*, 4 (1977), 96; see also *Nuntia*, 12 (1981), 63.

Canon 495 refers specifically to a member who is *post emissam professionem* without distinguishing between temporary or perpetual profession. However, canon 550 speaks of *sodalis*, a word which presupposes religious perpetual profession. Furthermore, in reference to a monk, canon 495 uses the word *deseruit*, which is not simply an exit, but an intention to leave the monastery.⁵⁷ Canon 550 addresses the illegitimate absence⁵⁸ of a religious member who left the house without permission, and in such a way, as to free him or herself from obedience to the immediate superior.⁵⁹ In this instance, the intention of the

⁵⁷ See PUJOL, *La vita religiosa orientale*, 359.

⁵⁸ See NEDUNGATT, *A Guide to the Eastern Code*, 388.

⁵⁹ The absence of a member from the house who is not permitted to be absent can be demonstrated by evidence that the member left the house without authorization. However, the intention of a member to not comply with the authority of their immediate superior is not always evident and must be demonstrated in an appropriate process. If the dismissal of a member from a religious institute is deemed necessary, the superior is obligated to evaluate all pertinent factors and ascertain whether the member's absence was indeed illegitimate, particularly in instances where the member had expressed a deliberate intention to disobey the authority of their immediate superior. Canon law has no established provisions that address the process of demonstrating an individual's intent to relinquish their subjugation under the authority of a superior. In addressing this particular case, it is conceivable to invoke the precedent set by Rota jurisprudence in cases involving the simulation of matrimony, where "[t]he internal consent of the mind is presumed to confront to the words or signs used in celebration of marriage" (*CCEO*, c. 824, §1; cf. *CIC*, c. 1101, §1).

A member who intends to disobey the authority of their immediate superior may express their direct refusal to comply in an external manner. A member who excludes him or herself from the obedience of the authority of their immediate superior involves "a positive act of the will" (*CCEO*, c. 824, §2), which may be explicitly elicited if it is manifested by some external sign, e.g., expressed words. See D. STAFFA, *De conditione contra matrimonii substantiam*, 2nd ed., Rome, Librarium Pont. Institutum Utrisque Iuris, 1955, footnote 27, 18-19; see also TRIBUNAL OF THE ROMAN ROTA, *coram* PALESTRO, 16 May 1990, no. 7, in *Sacrae Romanae Rotae decisiones seu sententiae*, 82 (1990), 368.

A positive act of the will may implicitly be elicited. Cf. TRIBUNAL OF THE ROMAN ROTA, *coram* SABATTANI, 29 October 1963, no. 3, in *Sacrae Romanae Rotae decisiones seu sententiae*, 55 (1963), 706. This is manifested in a conscious and deliberate manner through the use of specific words, which are utilized with the intention of creating a particular effect within a given context. For instance, a member who fails to return to their designated house within the stipulated timeframe for an authorized absence, as outlined by the statutes of their respective religious institutes, effectively rejects their obligation to submit to the directives of their immediate superior. Cf. TRIBUNAL OF THE ROMAN ROTA, *coram* FERRARO, 11 November 1980, no. 6, in *Sacrae Romanae Rotae decisiones seu sententiae*, 72 (1980), 718-719; cf. also TRIBUNAL OF THE ROMAN ROTA, *coram* GIANNECCHINI, 18 December 1996, no. 9, in *Monitor ecclesiasticus*, 123 (1998), 573. The implicit act is understood to be derived from the circumstances and the way of life of the contactant, given its inherent nature as a latent element that, nevertheless, exerts its efficacy. See TRIBUNAL OF THE ROMAN ROTA, *coram* PINTO, 9 June 2000, no. 9, (Brazil), in *StC*, 39 (2005), 282-283.

A positive act of the will is defined as an act that is voluntary, deliberate, and inherently human in nature. This definition suggests that such an act is informed by and directed towards a specific objective or purpose. See TRIBUNAL OF THE ROMAN ROTA, *coram* BOCCAFOLA, 27 February 1989, in *StC*, 46 (2012), 517.

An act of the will is defined by three characteristics: it is an act that is a) human, meaning it is deliberate and occurs through the actions of the intellect and will; b) positive, indicating it is truly placed at the actual time of withdrawing from the power of a superior, effectively connecting with the inner intention; and c) firm, denoting that the action is committed according to the determination of the will and not otherwise. See TRIBUNAL OF THE ROMAN ROTA, *coram* DEFILIPPI, 22 July 1999, n. 4, in *Sacrae Romanae Rotae decisiones seu sententiae*, 91 (1999), 559-560.

Positive acts of the will are defined as the transition from potency to act, from inertia into active simulation, and from the intellect to the will. See TRIBUNAL OF THE ROMAN ROTA, *coram* HUBER, 30 April 2003, n. 4, in *Sacrae Romanae Rotae decisiones seu sententiae*, 95 (2003), 241.

“The proof of simulation is difficult – first because it concerns the internal act, known directly only by God... and second because the presumption... must be overcome” (TRIBUNAL OF THE ROMAN ROTA, *coram* GIANNECCHINI, 23 January 1996, in *Monitor Ecclesiasticus*, 123 (1998), 421).

Antecedent, concomitant and subsequent circumstances constitute indirect proof of simulation. If the aforementioned criteria are met, it is possible to deduce indications and conjectures that will confirm simulated consent. See TRIBUNAL OF THE ROMAN ROTA, *coram* FALTIN, 18 January 1988, in *Sacrae Romanae Rotae decisiones seu sententiae*, 80 (1988), 3-6; see also TRIBUNAL OF THE ROMAN ROTA, *coram* GIANNECCHINI, 23 January 1996, in *Monitor Ecclesiasticus*, 123 (1998), 423; see also TRIBUNAL OF THE ROMAN ROTA, *coram* RAGNI, 19 April 1994, no. 8, in *Sacrae Romanae Rotae decisiones seu sententiae*, 86 (1994), 183; cf. TRIBUNAL OF THE ROMAN ROTA, TRIBUNAL OF THE ROMAN ROTA, *coram* PINTO, 9 April 1973, no. 4, in *Sacrae Romanae Rotae decisiones seu sententiae*, 65 (1973), 361; cf. also TRIBUNAL OF THE ROMAN ROTA, *coram* BURKE, 15 December 1994, no. 12, (Milan), in *StC*, 30 (1996), 235; cf. also TRIBUNAL OF THE ROMAN ROTA, *coram* FALTIN, 16 April 1997, no. 9, in *Monitor ecclesiasticus*, 123 (1998), 255.

To demonstrate that a member has the intention to exclude oneself from obeying the authority of one’s immediate superior, it is imperative to examine the individual’s behavior. That is to say, the acts committed by the person are frequently contained within the signs manifested. Actions speak more eloquently than words. See TRIBUNAL OF THE ROMAN ROTA, *coram* MONIER, 27 October 2006, no. 6, in *StC*, 43 (2009), 249.

An examination of the concept of *will*, understood as an internal human act, reveals its manifestation through signs that are either immediately apparent in the words themselves or subtly concealed within them, akin to the effect being embedded within the cause. The manifestation of a positive act, which is expressed externally, can serve as evidence to support its occurrence. See TRIBUNAL OF THE ROMAN ROTA, *coram* MONIER, 27 October 2006, no. 5, in *StC*, 43 (2009), 247-249.

This pertains to the internal act of the member and the presumption concerning the conformity of the internal intention with the external manifestation of the act must be overcome. One such manifestation is the refusal to obey the authority of one’s immediate superior, despite having been legitimately summoned (cf. *CCEO*, c. 1520, §3). Notwithstanding the absence of direct evidence, the member’s intent to relinquish their subjugation to the authority of a superior can be substantiated by credible witnesses (e.g., fellow members of the religious institute, devout Christians) whose testimonies are deemed trustworthy. During the inquiry, it is vital to ascertain the underlying motivations. The impetus for such action must be deemed substantial and proportionate to the gravity of the underlying cause. Finally, an investigation into the circumstances is necessary, including the confirmation of the positive act of will, as well as consideration of the antecedent, concomitant, and subsequent circumstances, and corroboration by credible witnesses or trustworthy documents.

Circumstantial evidence may be present in instances where there is pressure from the superior to obey a particular law of a religious institute. Alternatively, a member may have no direct intention of remaining in the religious institute. Additionally, a member may have taken a religious vow without an intrinsic will to do so. Furthermore, a member may not have received a voice of vocation from God. Finally, a member’s philosophy of life may be radically different from the Christian philosophy. Cf. L.G. WRENN, *The Invalid Marriage*, Washington, DC, CLSA, 1998, 125.

religious is not to leave consecrated life. The will of the religious to return to a religious institute is not excluded, but it is not necessarily an intent to return to the same house from which he or she came, and to which he or she is ascribed.⁶⁰ The return must occur within the time prescribed in the statutes, and it will signify a rethinking and a sincere repentance.⁶¹ Otherwise he or she is to be punished according to the norm of the law, which may influence an eventual decision for dismissal.⁶²

Abandonment of the monastery must be done illegitimately, without prior permission, which is at least presumed or alternately against the will of the superior, or

⁶⁰ See PUJOL, *La vita religiosa orientale*, 360.

⁶¹ See J. ABBASS, “Seeking Out an Illegitimate Absent Member,” in *Practical Comm*, vol. 1, 950.

⁶² On March 19, 2019, Pope Francis modified *CIC*, canon 694, which now states:

§1. A religious must be held as dismissed *ipso facto* from an institute who:

3) has been illegitimately absent from the religious house, pursuant to can. 665 §2, for 12 consecutive months, taking into account that the location of the religious himself or herself is unknown.

§2. In such cases the Major Superior, with his or her Council and without hesitation, having gathered the evidence, must issue the statement of the case so that the dismissal may be juridically constituted.

§3. In the case envisaged by §1 n. 3, in order to be juridically constituted, this statement must be confirmed by the Holy See; for institutes of diocesan right the confirmation rests with the Bishop of the principal See.

The act itself effects the dismissal of a religious member from the religious institute. The law requires that the member who was absent illegitimately for twelve months uninterrupted from the religious house must be held as *ipso facto* dismissed from a religious institute. The unavailability of the religious, whether himself or herself, must be taken into account, i.e., if the religious did not leave any trace that would allow the major superior to locate him or her. See CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETY OF APOSTOLIC LIFE, Circular Letter on the Apostolic Letter *motu proprio Communis vita*, 8 September 2019, in *Communicationes*, 51 (2019), 423-424.

The legislator requires the presence of an intention in order to withdraw from the power of superiors on the part of the religious member. The illegitimately absent member must first be sought out and helped to return. Only if such an effort is futile and the absence lasts for twelve uninterrupted months, can the member be dismissed. Therefore, the major superior may apply *CIC*, canon 1321, §4, “[w]here there has been an external violation, imputability is presumed.” The major superior is competent to issue the statement of *ipso facto* dismissal. See V.J. DE RIBEIRO, “The Dismissal of Religious Relatives for the Illegitimate Absence of the Religious House after *motu proprio Communis Vita* (Pars I),” in *Scientia canonica*, vol. 2, no. 3 (2019), 61.

In *ipso facto* dismissal, the religious is dismissed from the moment the *fattispecie* takes shape, regardless of the will of his or her major superior. See V.J. DE RIBEIRO, “The Dismissal of Religious Relatives for the Illegitimate Absence of the Religious House after *motu proprio Communis Vita* (Pars II),” in *Scientia Canonica*, vol. 2, no. 4 (2019), 57-59.

finally, without legitimate dismissal.⁶³ A monk is required to obey by virtue of religious profession, and the norm imposes the obligation on him or her to reside in his or her own monastery.⁶⁴ Therefore, in the case of the illegitimate absence of a monk, the canon reminds him or her of the obligation to return to their own monastery without delay. The Eastern Code binds the superiors to act promptly and solicitously when seeking out a member who illegitimately left the monastery. Effective means to find and convince him or her to return to the monastery for their own good must be undertaken.⁶⁵ If in fact the truly repentant member returns to the monastery, the superior must receive him or her with the understanding that a penance, which the superior will consider to be convenient, will be imposed upon them once they return.⁶⁶ However, if the monk returns without showing signs of true repentance, the superior must punish the member according to the particular law of the monastery, even, if it is deemed to be appropriate to, impose dismissal on the monk.

For the religious member who is illegitimately absent from an order or congregation, *CCEO*, canon 550 obliges the superior of the house, though not all the superiors of the order or of the congregation, to look for him or her with concern, using adequate means. Upon finding him or her, the superior of the house must try to make him or her return, even if it is not necessarily to the same religious house from which the member left.⁶⁷ If the superior deems it convenient and opportune, a punishment can be imposed upon the

⁶³ See PUJOL, *La vita religiosa orientale*, 359.

⁶⁴ See *CCEO*, c. 478.

⁶⁵ See ABBASS, "Seeking Out an Illegitimate Absent Member," 950.

⁶⁶ See PUJOL, *La vita religiosa orientale*, 360.

⁶⁷ See *ibid.*

delinquent religious, even one who has returned spontaneously.⁶⁸ If the member who was absent illegitimately returns after the time established in the statutes, he or she must be punished in accordance with the law, and may also be subject to dismissal.⁶⁹

A religious member who illegitimately abandoned the religious institute, is to remain a member of the monastery, the order or the congregation. Such a member is not freed from religious profession, nor from the obligations imposed by the typicon or statutes. However, if it is a question of a member with only a temporary profession, and if in the meantime the profession ceases, this member remains free of religious profession; he or she is no longer considered to be a member of the religious institute.

A religious member with perpetual profession and sacred orders illegitimately absent from the monastery or the religious house, who persists in this condition, cannot exercise sacred orders because of the lack of a benevolent bishop. No bishop without the consent of the competent superior, is able to act on behalf of the religious, since such a religious continues to be a member of the monastery, order or congregation.⁷⁰

A specific case may arise when a nun with a temporary or perpetual profession abandons the monastery. The local hierarch whose territory the nun lives in, and the competent superior of the religious nun (if the female order has a certain dependence on the male order), cannot consider themselves free from the obligation to seek the delinquent nun with concern for her welfare. If the nun in question is a member of a particular

⁶⁸ *CCEO*, canons 495 and 550 present punishment and dismissal as alternatives. They do not consider dismissal as a punishment. See R.J. GEISINGER, "Cleric Members of Institutes of Consecrated Life and Societies of Apostolic Life: SST/Normae 2010 Article 2 and Article 6 Delicts Reserved to the Congregation for the Doctrine of the Faith," in *Ius missionale*, 14 (2020), 127.

⁶⁹ See ABBASS, "Seeking Out an Illegitimate Absent Member," 1024.

⁷⁰ See PUJOL, *La vita religiosa orientale*, 360-361.

monastery and has made only a temporary profession, once the period of time for the temporary profession has ceased, she becomes totally free juridically. Otherwise, the above-mentioned ruling applies to a nun with perpetual profession, similar to that which has been stated above concerning religious.⁷¹

2.1.4 — Facultative Dismissal of a Religious Member

A religious member who, by profession, is admitted into the monastic or religious state, can be dismissed from the religious institute by the proper authority. This is termed as an optional *ab homine* dismissal, as the competent authority may or may not, using its own discretion, initiate a procedure for dismissal. The *CCEO* distinguishes the processes of dismissal from the religious institute for a member with a temporary from one with perpetual profession.

2.1.4.1 — Dismissal of a Member with Temporary Profession

A religious member with temporary profession, whether in monasteries, orders or congregations, can be dismissed from the religious institute, if the matter is important and confirmed by the competent religious superior:

A member can be dismissed during temporary profession by the superior of the monastery *sui iuris* with the consent of his or her council according to can. 552 §§2 and 3, but, for validity, the dismissal must be confirmed by the patriarch if particular law so establishes for monasteries situated within the territorial boundaries of the patriarchal Church.⁷²

CCEO, canon 552, §§2-3 explicitly addresses the procedure⁷³ for imposing of dismissal on a monk or religious as follows:

⁷¹ See *ibid*, 361.

⁷² Pope Francis in Apostolic Letter *motu proprio Competentias quasdam decernere*, revised some norms, which now are higher law (*ius*) of the Eastern Code. *CCEO*, c. 499.

⁷³ See ABBASS, *The Consecrated Life*, 417.

§2. In deciding about the dismissal, in addition to other conditions that may be prescribed by the statutes, the following must be observed:

1° the causes for dismissal must be grave, and on the part of the member also external and imputable [*culpabiles*];

2° the lack of a religious spirit, which can be of scandal to others, is a sufficient cause for dismissal if a repeated warning, along with salutary penances, have been in vain;

3° the dismissing authority must have come to know the reasons with certainty, although it is not necessary that they be formally proven. Yet, they must always be made known to the member, granting the member full opportunity of self-defense, and the member's responses are to be faithfully submitted to the dismissing authority.

§3. A recourse against the decree of dismissal has suspensive effect.

In addition to other requirements indicated in the member's typicon or statutes, canon law requires that the causes be grave. This has a special significance for a religious who is deprived of the means of sanctification, and it can also be compelling for the common good of the religious institute. Finally, the causes have to be external, because a purely internal cause escapes human judgment. The causes for dismissal must be examined and proven, however, the law does not demand a formal process.⁷⁴ Furthermore, a religious who committed a grave offence must act in such a way that he or she is subjectively culpable⁷⁵ of it; habitual neglect of the obligations of consecrated life, repeated violations of sacred

⁷⁴ See HOLLAND, "Chapter VI Separation," 867.

⁷⁵ Unlike *CIC*, canon 1321, §2 the *CCEO* omits the term *imputabilitas (moralis)* in connection with penal liability. Furthermore, *CCEO*, canon 1414, §2 provides three preconditions when a person is liable for penalties who has violated a penal law or penal precept without using such terms as *dolus* or *culpa*: (1) deliberate action (which is presumed), or (2) seriously culpable omission of due diligence, or (3) seriously culpable ignorance of the law or precept. See *Nuntia*, 4 (1977), 82-83.

The Eastern Code omits the term *imputability* with the aim to keep separation between internal and external forums and to avoid the questionable presumption of imputability envisaged in *CIC*, canon 1321, §4. See R. DOMINGO, "Penal Law in the Roman Catholic Church," in *Ecclesiastical Law Society*, 20 (2018), 168.

"Imputability is attribution of a particular act to a particular person (or persons) in the external forum. Moral imputability means that the person is also somehow responsible for the act because of some degree of knowledge and choice (that is, it was not merely an accident)" (E. McDONOUGH, "Mandatory Dismissal," in *RfR*, 61 (2002), 650).

bonds,⁷⁶ continued obstinate disobedience to the legitimate dispositions of superiors in serious matters, a grave scandal derived from the culpable behaviour of the religious, obstinate support of propaganda regarding doctrines condemned by the magisterium of the Church, public adherence to ideologies vitiated by materialism or atheism, and other causes of similar gravity determined by the statutes.⁷⁷ Illnesses are not included among the causes for dismissal of a religious in temporary profession.⁷⁸ A disease is not a cause of imputability or responsibility.⁷⁹ However, intentional concealment of the disease before profession is.⁸⁰ If there are a lack of such conditions, this could constitute a reason for non-dismissal. However, sufficient cause for dismissal of the religious with temporary profession is a lack of religious spirit;⁸¹ this lack of religious spirit can be combined with scandal to others, whether to another religious member or even a member of the laity.⁸²

It is the responsibility of the competent superior to render judgement regarding this lack of spirit. The *CCEO* imposes special significance; namely, there is considered to be sufficient cause when, having been admonished several times and punished with salutary penances, all efforts to inspire spirit have become futile, and the religious continues with a lack of religious spirit.⁸³ The admonition of the competent superior must last as long as the

⁷⁶ See M. SAJ, "Prawna strona ślubu ubóstwa [The Juridical Aspect of the Vow of Poverty]," in *Prawo kanoniczne*, vol. 53, nos. 1-2 (2010), 143.

⁷⁷ Cf. *CIC*, c. 696, §1.

⁷⁸ Gallen states: "[p]hysical, psychological, or mental illness, even if contracted after first profession, is a sufficient reason for exclusion if, in the judgment of experts, it renders a person unfit for life in the institute without harm to himself or the institute. I think what is here intended is serious harm" (GALLEN, "The Proposed Canons on the Consecrated Life Explained: IV," 889).

⁷⁹ See THATTIL, "Distinct Motives for the Dismissal of Religious," 216.

⁸⁰ See *Nuntia*, 16 (1983), 101.

⁸¹ The lack of religious spirit may be difficult to determine objectively. See ABBASS, "*Ipsa Iure* Dismissal and Expulsion," 1027.

⁸² See PUJOL, *La vita religiosa orientale*, 382-383.

⁸³ See HOLLAND, "Canonical Dismissal," 76.

superior deems appropriate. The religious should be given time to repent. This time is also required in order to judge whether the superior's action is effective or not.⁸⁴

The reasons and the conditions for the dismissal of the religious must be understood by the authority with certainty, who issues the decision to dismiss in a decree. These reasons do not necessarily have to be formally proven.⁸⁵ The religious, whose dismissal is in progress, must be made aware of the reasons that motivate the dismissal process. At the same time, he or she must be given opportunity to defend him or herself, providing the supporting reasons which must be submitted either in writing or verbally.⁸⁶ These reasons must be faithfully transcribed during his or her defence, and delivered to the competent authority who may impose a decree of dismissal.

2.1.4.2 — Dismissal of a Member with Perpetual Profession

A religious member who has definitively assumed the religious state may be dismissed from the religious institute for having committed some grave offence unless the competent superior considers the following: the dismissal is unnecessary, and the correction of the religious member,⁸⁷ as well as the reinstatement of justice and the reparation of the scandal, can be sufficiently provided in another manner.⁸⁸ However, if the

⁸⁴ See *CCEO*, c. 552, §2.

⁸⁵ In the clause “etsi necesse haud sit ut eadem formaliter comprobentur” is specified with “formali iudicio comprobentur.” The text also refers to religious without the *potestas iudicialis*. See *Nuntia*, 16 (1983), 100.

⁸⁶ “The right of defense [...] is given to a person by the law of nature” (TRIBUNAL OF THE ROMAN ROTA, *coram MORI*, 16 June 1910, Latin original with English translation in W.L. DANIEL (ed.), *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura: Official Latin with English Translation*, Gratianus Series, Montreal, Wilson & Lafleur, 2011, 51).

⁸⁷ See B.V. PERUMAYAN, “Revised Penal Sanctions of CIC Book VI and CCEO Title XXVII: A Comparative Reading,” in *Ius*, vol. 12, no. 1 (June 2021), 14.

⁸⁸ See SALACHAS, *La vita consacrata*, 185.

authority must begin the process of dismissal of a perpetually professed religious member and to decide validly, *CCEO*, canon 500, §2, 1° specifies that the causes must be grave, imputable [*culpabiles*] and juridically proven,⁸⁹ which are combined with persistent repetition,⁹⁰ that is, the lack of amendment. In addition to this, other conditions can be stipulated in the typicon or the statutes of each individual religious institute;⁹¹ such as the transfer of the religious to another house, removal from office, paternal warning, etc.⁹²

In addition to causes where there is automatic dismissal in the *CCEO*, canon 497, and those where an expulsion from the religious institute is stipulated, and where external scandal or damage to the religious institute exists, grave causes would be those referred to above, according to *CIC*, canon 696, §1.

Moreover, causes which pertain to the delicts of a priest in the *Normae de delictis Congregationi pro doctrina fidei reservatis* (=2021 *Normae*) could lead to dismissal from the religious institute. Although these norms may not result in removal from the clerical state, the competent superior, at his own discretion, can initiate the dismissal procedure if there is a lack of reform, and if, in accordance with *CCEO*, canon 500, §2, 1°, the reasons for dismissal are grave, culpable and juridically proven. The more grave delicts that could

⁸⁹ Canon law deals not just with typified crimes, but with behaviour that becomes grounds for dismissal provided it has these characteristics: (1) graveness must exist not only from a moral point of view, as a behavior, but also as the impact of such behavior on religious discipline, i.e., the way of acting becomes grave due to the circumstances in which it occurs and the harm it causes to the community; (2) external, which does not necessarily mean that the causes must be public, but it is required that it not be a matter of conscience, purely internal; (3) deliberate violation of law, both from a moral and juridic point of view, by the omission of due diligence; (4) juridically proven by legal evidence, such as notoriety of an act, witnesses, documents, or even confession of a member dismissing. See J. TORRES, “Forme di separazione dei membri dall’Istituto,” in *Commentarium pro religiosis et missionariis*, 98 (2017), 60-61.

⁹⁰ See THATIL, “Distinct Motives for the Dismissal of Religious,” 216.

⁹¹ The causes to dismiss the member may “be based on the spirit and purpose of each institute” (THATIL, “Distinct Motives for the Dismissal of Religious,” 218).

⁹² See PUJOL, *La vita religiosa orientale*, 387.

lead to dismissal from the religious institute as indicated in the *2021 Normae* are: the simulation of the liturgical action of the Eucharistic Sacrifice or sacramental absolution, as mentioned in *CCEO*, canon 1443, §1, 1°;⁹³ the concelebration of the Eucharistic Sacrifice as prohibited according to the norm of *CCEO*, canon 702, stated in *CCEO*, canon 1440, with ministers of ecclesial communities which do not have apostolic succession and do not acknowledge the sacramental dignity of priestly ordination;⁹⁴ the absolution of an accomplice in a sin against the sixth commandment of the Decalogue, stated in *CCEO*, canon 1457 – regarding chastity; and the direct and indirect violation of the sacramental seal,⁹⁵ stated in *CCEO*, canon 1456, §1.⁹⁶

These causes indicate and illustrate other causes of similar gravity,⁹⁷ and are helpful in making a determination for or against dismissal. Furthermore, a religious member with perpetual profession could be dismissed if he or she commits delicts against human life, its dignity and liberty. This will be referenced as it pertains to the dismissal of a religious member who commits *graviora delicta*.

⁹³ See CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Normae de delictis Congregationi pro doctrina fidei reservatis*, 11 October 2021 (=2021 *Normae*), arts. 3, §1, 3°, 4, §1, 3°, in *AAS*, 114 (2022), 115, English translation in RENKEN, *Substantive Law*, 614-615.

⁹⁴ See *2021 Normae*, art. 3, §1, 4°, in *AAS*, 114 (2022), 115, RENKEN, *Substantive Law*, 614-615; see also T.J. GREEN, “*Sacramentorum sanctitatis tutela*: Reflections on the Revised May 2010 Norms on More Serious Delicts,” in *J*, 71 (2011), 130-132.

⁹⁵ See APOSTOLIC PENITENTIARY, Note on the Importance of the Internal Forum and the Inviolability of the Sacramental Seal *Con l’Incarnazione*, 29 June 2019, in *AAS*, 111 (2019), 1213-1221, English translation in RENKEN, *Substantive Law*, 605-612.

⁹⁶ See *2021 Normae*, art. 4, §1, 1°, in *AAS*, 114 (2022), 115, RENKEN, *Substantive Law*, 615; see also GREEN, “*Sacramentorum sanctitatis tutela*: Reflections,” 133-136.

⁹⁷ See SALACHAS, *La vita consacrata*, 186; see also ARTNER, “Disciplinary Measures,” 492.

2.2 — Dismissal of a Religious Member for *graviora delicta*

For a lengthy period of time, the *CCEO* omitted numerous norms referring to the matter of a religious member committing *graviora delicta*, which contradict the vows of obedience, chastity and poverty, which the religious assumed in choosing the religious state. In light of the contemporary needs of the Eastern Catholic Churches, Pope Francis, with the promulgation of *VP*, which took effect on June 29, 2023, modified the penal law for the Eastern Churches *sui iuris*, thus facilitating a more appropriate and effective approach to administering both Eastern penal discipline and universal discipline. Pope Francis emphasized that within the confines of the Church, the purpose of punishment is the restoration of justice, the correction of the offender and the reparation of the damage caused by the delict. A pastor demonstrates responsibility to his duty and his love for the faithful who are committed to him by preventing delicts that may cause harm, and by justly rendering punishment of a guilty individual.⁹⁸

2.2.1 — *Graviora delicta* in the Eastern Code

A member who commits *graviora delicta* must be punished according to the gravity of the delict. If the case warrants, and if the offender is in sacred orders, removal from the clerical state is not excluded. Furthermore, regardless of the jurisdiction of the religious institute, a member may be dismissed from their religious institute.

⁹⁸ See *VP*, in *AAS*, 115 (2023), 384, in *Communicationes*, 55 (2023), 36.

2.2.1.1 — Offences Against Human Life

Deliberate murder contradicts the right to life of a human being, and responsibility of the Church is to protect this right. Ancient sacred canons set severe penalties (e.g., lifelong penance, a term of ten years or a term of twenty years⁹⁹ of prohibition from the Holy Eucharist) on those who commit murder, both intentional and unintentional, or who caused or aided an abortion. The Council of Ancyra, which was held in 314, states:

Concerning women who commit fornication, and destroy that which they have conceived, or who are employed in making drugs for abortion, the former decree excluded them until the hour of death, and by this they are bound. Nevertheless, being desirous to use somewhat greater lenity, we have ordained that they fulfil ten years [of penance], according to the prescribed degrees.¹⁰⁰

The Council of Trullo issued a norm, canon 91, which states: “[w]omen who provide abortifacient drugs and those who receive poisons that kill embryos were subject to the penance for murder.”¹⁰¹

CCEO, canon 1450 prescribes:

§1. A person who has committed a homicide, is to be punished with a major excommunication; a cleric is to be punished in addition with other penalties, not excluding deposition.

§2. A person who has procured a completed abortion is to be punished in the same manner, with due regard for can. 728 §2.

Church law requires that a person who has committed murder¹⁰² shall be punished with a major excommunication. A cleric who has committed murder is to be punished with

⁹⁹ Cf. “Letter to Amphilochius, on the Canons,” c. 56, in SAINT BASIL, *Letters, Volume II (186-368)*, A.C. WAY (En. transl.), R.J. DEFERRARI (ed. director), *The Fathers of the Church*, vol. 28, New York, Fathers of the Church, Inc., 1955, 108.

¹⁰⁰ *Canons of Ancyra*, canon 21, in J. FULTON (ed.), *Index Canonum: The Greek Text, an English Translation, and a Complete Digest of the Entire Code of Canon Law of the Undivided Primitive Church*, 2nd ed., Eugene, OR, Wipf & Stock, 2014, 209.

¹⁰¹ *The Canons of the Quinisext Council (691/2)*, R. PRICE (English translation), vol. 74, Liverpool, University Press, 2020, 163.

¹⁰² On May 23, 2021, Pope Francis promulgated the apostolic constitution *Pascite gregem Dei*, which replaces Book VI of the *Codex iuris canonici*. This apostolic constitution codifies the penal law of the Latin Catholic Church. *CIC*, canon 1397 establishes the delict of murder, forced or fraudulent abduction,

additional penalties, not excluding removal from the clerical state.¹⁰³ Moreover, the crime of homicide most likely would be punished in the civil forum.¹⁰⁴

The person who procures a completed abortion also must be punished with a major excommunication. If a cleric is involved in directly procuring an abortion, he must also be punished with a major excommunication, not excluding removal from the clerical state.

The Pontifical Council for the Authentic Interpretation of the Code of Canon Law replied to a dubium on *CIC*, canon 1398, in terms of killing by abortion, stating,¹⁰⁵ the performing of an abortion is, “the killing of the same fetus procured in whatever way at whatever time from the moment of conception,”¹⁰⁶ it is the same as homicide. Even though no official interpretation of the meaning of *CCEO*, canon 1450, §2 exists, the wording of *CIC/83*, canon 1398, and currently, *CIC*, canon 1397, §2 is similar.

Pope Francis granted the faculty to all priests to absolve the sin of abortion: “[g]iven this need, lest any obstacle arise between the request for reconciliation and God’s forgiveness, I henceforth grant to all priests, in virtue of their ministry, the faculty to

imprisonment, mutilation or the gravely wounding of a person. The offender has to be punished according to the gravity of the offence by means of the expiatory penalties which are now classified into order, prohibition, deprivation and dismissal from the clerical state. The expiatory penalty may affect the offender either for a determined or indeterminate period of time, or perpetually, i.e., if the offender is a cleric, he can be dismissed from the clerical state. Furthermore, if a cleric is involved in committing the above mentioned delicts which involve more serious cases, he must be dismissed from the clerical state. See J.I. ARRIETA, Commentary on c. 1397, in *CCLA*, 1103-1104.

¹⁰³ See GREEN, “Penal Law,” 107.

¹⁰⁴ See HOLLAND, “Canonical Dismissal,” 65.

¹⁰⁵ D. Utrum abortus, de quo in can. 1398, intellegatur tantum de eiectione fetus immaturi, an etiam de eiusdem fetus occisione quocumque modo et quocumque tempore a momento conceptionis procuretur.

R. Negative ad primam partem: affirmative ad secundam.

(PONTIFICAL COUNCIL FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, reply, 23 May 1988, in *AAS*, 80 (1988), 1818).

¹⁰⁶ F.C. EASTON, “Homicide and Abortion,” in *Practical Comm*, vol. 2, 2588.

absolve those who have committed the sin of procured abortion.”¹⁰⁷ However, all the delicts mentioned in *CIC*, canon 1397 constitute canonical irregularities for those who wish to receive or exercise sacred orders in the future.¹⁰⁸

2.2.1.2 — Offences Against Liberty

CCEO, canon 1451 addresses the issue of injuries endangering human life and freedom:

A person who has kidnapped or unjustly detained, seriously wounded or mutilated, or inflicted bodily or mental torture on a person is to be punished with an appropriate penalty, not excluding a major excommunication.

In the circumstance of a person who commits kidnapping, unjust detainment, serious wounding, mutilating, imposing bodily or mental torture, this canon imposes undetermined penalties. It also allows for a major excommunication.¹⁰⁹

Canon law highlights the necessity for a judge or hierarch to give careful consideration to the provisions of the *CCEO*. The judge or hierarch, in accord with his conscience and prudence, can:

abstain from imposing a penalty or impose a lighter penalty if the offender has reformed and has provided for the reparation of the scandal and damage, or if the offender has been or, it is foreseen, will be punished sufficiently by civil authority.¹¹⁰

If the judge or hierarch sees that the penalty seems to be too light in relation the impact of the delict committed by the offender on the Church, the judge or hierarch can proceed to punish to the fullest extent possible in ecclesiastical law, which is the penalty

¹⁰⁷ FRANCIS, Apostolic Letter at the Conclusion of the Extraordinary Jubilee of Mercy *Misericordia et misera*, 20 November 2016, no. 12, in *AAS*, 108 (2016), 1319-1320, in *Communicationes*, 48 (2016), 361.

¹⁰⁸ See *CCEO*, cc. 762, §1, 4°-5°, 763, 2°; see also *CIC*, cc. 1041, 4°-5°, 1044, §1, 3°; cf. L. CHIAPPETTA, *Il codice di diritto canonico: commento giuridico-pastorale*, 3rd ed., vol. 2, Bologna, EDB, 2011, 250.

¹⁰⁹ See F.C. EASTON, “Injuries to Human Life and Freedom,” in *Practical Comm*, vol. 2, 2589.

¹¹⁰ *CCEO*, c. 1409, §1, 2°.

of major excommunication; if it is a cleric – other penalties could apply, not excluding removal from the clerical state.¹¹¹

2.2.1.3 — Offences Against Dignity

From the very beginning, ecclesiastical authority has defended human dignity. The ecclesiastical authority was aware that there were clergy who abused their position and committed the sin of impurity, especially against children. This sin, ecclesiastical authority has interpreted as especially evil.¹¹²

The Council of Elvira, which was held in 305-306, considers sin against chastity with boys very evil and ordered in canon 71, “[p]eople who sexually abuse boys shall not be given communion even at the end.”¹¹³

The Council of Nicaea, which was held in 325, ordered:

If any Presbyters have been advanced without examination, or if upon examination they have made confession of crime, and men acting in violation of the Canon have laid hands upon them, notwithstanding their confession, these men the Canon does not admit; for the Catholic Church justifies that [only] which is blameless.¹¹⁴

Unchaste priests cannot exercise sacred orders.

A cleric who abuses the state to which he is called, must be punished with an appropriate penalty, not excluding suspension, or, if the case so warrants – removal from the clerical state. If a religious, male or female, who has made a public, perpetual vow of chastity commits the same delicts, he or she is to be punished with an appropriate penalty.

CCEO, canon 1453 states:

¹¹¹ See EASTON, “Homicide and Abortion,” 2588.

¹¹² See B. DALY, “Dismissal from the Clerical State,” in *The Canonist*, vol. 11, no. 1 (2020), 32.

¹¹³ S.J. ROSSETTI, *A Tragic Grace: The Catholic Church and Child Sexual Abuse*, Collegeville, MN, Liturgical Press, 1996, 104.

¹¹⁴ *Canons of Nicaea*, canon 9, in FULTON, *Index Canonum*, 127.

§1. A cleric who lives in concubinage or otherwise persists with scandal in an external sin against chastity is to be punished with a suspension. If he persists in the delict, other penalties can gradually be added, up to deposition.

§2. A cleric who has attempted a forbidden marriage is to be deposed.

§3. A cleric who in another way has committed a delict against chastity, if in fact the delict was committed publicly, is to be punished with appropriate penalties, not excluding deposition if the case so warrants.

§4. A cleric who by force, threats, or abuse of his authority commits a delict against chastity, or who forces someone to perform or submit to sexual acts, is to be punished with the same penalty mentioned in §3.

§5. A cleric is to be punished with privation of office and other appropriate penalties, not excluding deposition if the case so warrants:

1° who commits a delict against chastity with a minor or with a person who habitually lacks the use of reason, or with a person for whom the law recognizes equal protection;

2° who recruits or induces a minor or a person who habitually lacks the use of reason, or a person for whom the law recognizes equal protection, to show himself or herself pornographically or to participate in pornographic exhibitions, whether real or simulated;

3° who, contrary to good morals, acquires, possesses, exhibits, or distributes, by any means and using whatever technology, pornographic images of minors or of persons who habitually lack the use of reason.

§6. A religious who has taken a public, perpetual vow of chastity and is not constituted in a sacred order is to be punished with an appropriate penalty if he or she commits the delicts mentioned in §§1 and 2.

§7. A religious or a member of a society of apostolic life in the manner of religious and any lay person who has some dignity or who fulfills an office or function in the Church, if he or she commits a delict mentioned in §§3-5, is to be punished with an appropriate penalty according to the gravity of the delict.

After the promulgation of *VP*, various types of delicts under the heading of chastity are now mentioned in the modified canon 1453. Part of this canon now is a modification of the *CCEO* promulgated in 1990.¹¹⁵ These delicts include the following: a cleric who lives in concubinage,¹¹⁶ consisting of the permanent cohabitation as though husband and

¹¹⁵ Cf. *CIC*, c. 1395.

¹¹⁶ The concubinage implies regular sexual relations between the cleric and the woman, married or not. See J. MARTIN, Commentary on c. 1395, §1, in *CLSGBI Comm*, 804.

wife,¹¹⁷ which is not necessarily a cause of scandal but which does exist;¹¹⁸ a cleric who causes a permanent scandal, i.e., a single event, even if repeated, is not enough and the situation of permanence must be one of a scandalous nature¹¹⁹ by externally sinning against chastity,¹²⁰ which would include such activities as incest, adultery, homosexual relations, all without the element of cohabitation but with the elements of persistence in the repetition of external sexual actions done in a way that provokes scandal.¹²¹ Such delicts also include the case of a cleric who, by force, threats¹²² or abuse of his authority, commits a delict against chastity or forces someone to perform or submit to sexual acts. The cleric who commits any of these delicts is to be punished with an obligatory and determinate penalty, which is suspension. This penalty is called a medicinal penalty for a guilty cleric, in order to persuade him to cease the delict.¹²³ If this penalty is not successful in deterring the cleric from engaging in the delict, the hierarch can impose another penalty, up to, and including, removal from the clerical state.¹²⁴

¹¹⁷ See A. CALABRESE, *Diritto penale canonico*, 3rd ed., Vatican City, Libreria editrice Vatican, 2006, 334.

¹¹⁸ See RENKEN, *Substantive Law*, 455; see also F.C. EASTON, “External Sins against Chastity,” in *Practical Comm*, vol. 2, 2592.

¹¹⁹ See PAOLIS, *La vita consacrata nella Chiesa*, 579.

¹²⁰ USCCB states “if there is any doubt whether a specific act qualifies as an external, objectively grave violation, the writings of recognized moral theologians should be consulted” (A.J. RENKEN, *The Penal Law of the Roman Catholic Church: Commentary on Canons 1311-1399 and 1717-1731 and Other Sources of Penal Law*, Ottawa, Faculty of Canon Law, Saint Paul University, 2015 (=RENKEN, *The Penal Law*), 344).

¹²¹ See CALABRESE, *Diritto penale canonico*, 334.

¹²² The difference between a delict performed by force or by threats is that that the delict made by force takes away the freedom of the person, and the delict made by threats inspires fear. In both cases a crime is committed. See PAOLIS, *La vita consacrata nella Chiesa*, 580.

¹²³ Cf. J.H. PROVOST, “Time Duration of Suspension,” in A.J. ESPELAGE (ed.), *CLSA Advisory Opinions 1994-2000*, Washington, DC, CLSA, 2002, 435.

¹²⁴ See EASTON, “External Sins against Chastity,” 2592.

The penalty can be applied if the cleric, i.e., a bishop, priest or deacon,¹²⁵ is living in concubinage or repeatedly committing the external sin against chastity with scandal, and the delict has not ceased. However, if the offender who has desisted from the delict is one who has sincerely repented of the misdeed and has given adequate reparation of the scandal and harm, or has at least seriously promised to engage in reparation,¹²⁶ proof of true repentance and evidence of the scandal no longer continuing must exist. Nevertheless, some appropriate penalty could be applied, depending on the gravity of the delict.¹²⁷ However, if there are sound reasons to preclude a penal trial and the proofs of the delict are certain in the judgment of the authority, i.e., the Apostolic See, and, within the limits of their competence, the patriarch, major archbishop or eparchial bishop, the authority can impose punishment on the cleric who committed such delicts by an extra-judicial decree in accordance with *CCEO*, canons 1486 and 1487. This can be done as long as it is not a case of a deprivation of office, title, insignia or a suspension for more than one year, a demotion to a lower grade or removal from the clerical state or major excommunication.¹²⁸

A cleric who attempts a forbidden marriage is subject to a determinate penalty, which is removal from the clerical state, because a person who is in sacred orders can only attempt marriage invalidly.¹²⁹

CCEO, canon 1453, §§5-7 (cf. *CIC*, canon 1398) have been modified in order to deal with contemporary issues that relate to *graviora delicta*, which refers to committing a delict

¹²⁵ See *CCEO*, c. 325.

¹²⁶ See *CCEO*, c. 1407, §2.

¹²⁷ See HOLLAND, "Canonical Dismissal," 66.

¹²⁸ *CCEO*, c. 1402, §3.

¹²⁹ See *CCEO*, c. 804.

against chastity with a minor or with a person who habitually lack the use of reason or to whom the law recognises requires protection. The Eastern law provides the following kinds of delicts against chastity committed by a cleric, a religious who has taken a public, perpetual vow of chastity, a member of a society of common life in the manner of religious or by any one of the faithful who enjoy an ecclesial dignity or perform an office or function in the Church: a delict involving minors or a person who habitually lack the use of reason or one to whom the law recognizes requires protection, which includes all possible forms of vulnerability; child pornography, i.e., one who recruits or induces a minor or a person who habitually lack the use of reason or one to whom the law recognizes requires protection to expose him or herself pornographically, or to take part in pornographic exhibitions, whether real or simulated; or one who acquires, retains, exhibits or distributes, in whatever manner and by whatever technology, pornographic images of minors or of persons who habitually lack the use of reason. When one of these persons commits the above-mentioned delicts, the process must be followed whether by the DDF,¹³⁰ or by a hierarch.¹³¹

CCEO, canon 1453, §6 states, if a religious, either male or female, who has taken a public, perpetual vow of chastity, commits the delict mentioned in §§1-2 of this canon, he or she must be punished with an appropriate penalty. The penalty is obligatory but not

¹³⁰ “It is advisable that the Ordinary or Hierarch communicate to the DDF the *notitia de delicto* and the decision made to forego the preliminary investigation due to the manifest lack of the semblance of truth” (DICASTERY FOR THE DOCTRINE OF THE FAITH, *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics* (version 2.0), 5 June 2022 (=Vademecum), no. 19, in *AAS*, 114 (2022), 924, English translation in RENKEN, *Substantive Law*, 628).

¹³¹ “Only delicts against the sixth commandment of the Decalogue identified in article 6, *all of which are committed by a cleric*, are *graviora delicta* reserved to the Dicastery for the Doctrine of the Faith” (RENKEN, *Substantive Law*, 482); see *2021 Normae*, art. 6, in *AAS*, 114 (2022), 116, RENKEN, *Substantive Law*, 616.

determined.¹³² Moreover, *CCEO*, canon 1453, §7 states that if a religious (either male or female) who has made a public, perpetual vow of chastity, a member of a society of common life in the manner of religious or any lay person who enjoys an ecclesial dignity or performs an office or *munera* in the Church, commits a delict mentioned in §§3-5, they shall be punished according to the gravity of the delict. The religious who is found guilty of a delict mentioned in §§3-5 may possibly be dismissed from a religious institute.

The authority who bears the responsibility to impose a penalty, if it concerns a member who is not in sacred orders of any religious institute, is the major superior of an institute of consecrated life, who enjoys ordinary governing power.¹³³ Otherwise, it is a hierarch to whom the religious institute is subject. The authority who bears the responsibility to impose a penalty, if it concerns a delict mentioned in §5 committed by a member who is in sacred orders of any religious institute, is the DDF.

2.2.2 — Proper Law of the Apostolic See

In the third millennium, the popes have promulgated several *motu proprios*, enacting complementary norms, which helped to adopt the universal procedures to prevent and combat *graviora delicta* that betray the trust of the faithful and impair the Church's mission.¹³⁴ These *graviora delicta* include, first, a delict against chastity with a minor or a person who habitually has an imperfect use of reason, with a vulnerable adult or with one whom the law recognizes as needing protection. Second, these *graviora delicta* include the

¹³² See GREEN, "Penal Law," 108.

¹³³ See V. DE PAOLIS, Commentary on c. 1402, in PINTO, *Commento CCEO*, 1108.

¹³⁴ See *VELM 2023*, in *AAS*, 115 (2023), 394, RENKEN, *Substantive Law*, 659.

immoral acquisition, possession, exhibition or distribution of pornographic images of minors, or of persons who habitually have an imperfect use of reason. Third, they include the recruitment or inducement of a minor or of a person who habitually has imperfect use of reason – or of a vulnerable adult – to pose in a pornographic manner, or to participate in real or simulated pornographic exhibitions. Each of the *motu proprios* contain substantive and procedural norms, particularly pertaining to these delicts, which are reserved to the DDF. With these *motu proprios*, together with *2021 Normae*, the legislator reserves prosecution, judgment and imposition of the canonical sanctions on the offender who commits the *graviora delicta*. Because the *motu proprios* and *2021 Normae* contain references to several canons of the Eastern Code, they are to be analyzed in the light of the *CCEO*.

2.2.2.1 — Apostolic Letter *motu proprio Sacramentorum sanctitatis tutela*

On April 30, 2001, Pope John Paul II promulgated *SST* to reserve the handling of a number of *gravioribus delictis* to the exclusive competency of the Congregation for the Doctrine of the Faith (=CDF), if a more grave delict is committed by a cleric, whether eparchial or religious.¹³⁵ Along with *SST*, Pope John Paul II promulgated *Normae de gravioribus delictis* (=Normae) reserved to the CDF.¹³⁶ *Normae* modified the procedural and penal law of the *CIC* and the *CCEO*. *SST* was soon followed by a CDF letter dated

¹³⁵ See B.V. PERUMAYAN, “From Reservation to Vigilance: A Possible Step in Dealing with the *delicta graviora*,” in *Ius*, vol. 11, no. 1 (June 2020), 115; see also GREEN, “*Sacramentorum sanctitatis tutela*: Reflections,” 121.

¹³⁶ See *Normae de gravioribus delictis* (=Normae), in WOESTMAN, *Ecclesiastical Sanctions and the Penal Process*, 303-309.

May 18, 2001, directed to ordinaries, which summarized the key thrust of the substantive and procedural norms.¹³⁷

In May of 2010, the CDF presented the revised *Normae de gravioribus delictis* (=2010 *Normae*),¹³⁸ which did not offer any significant new canonical developments. *2010 Normae* codify the CDF's evolving universal law¹³⁹ practices, which dealt with sexual abuse cases during the past decade, often under special papal faculties.¹⁴⁰ The recent revisions of *2021 Normae*¹⁴¹ were presented on October 4, 2019. The full text of *2021 Normae* presented by the CDF took place on October 11, 2021. *2021 Normae* represent a number of small, yet significant, new canonical developments adapted to the present situation.

2021 Normae are divided into two distinct parts. Part one includes eight substantive norms, of which arts. 2-6 indicate the number of *graviora delicta*. Part two includes twenty-one procedural norms. When it is deemed to be of necessity, the DDF will proceed to the declaration or imposition of canonical sanctions in accordance with the norms of both Latin and Eastern Codes,¹⁴² as well as *2021 Normae* on delicts reserved to the DDF, and other universal and proper laws issued by the Apostolic See. The DDF takes into account the

¹³⁷ See CONGREGATION FOR THE DOCTRINE OF THE FAITH, Letter to the Bishops and Other Interested Ordinaries and Hierarches of the Entire Catholic Church Concerning the *delicta graviora* Reserved to It, *Ad exsequendam ecclesiasticam*, 18 May 2001, in *AAS*, 93 (2001), 785-788, English translation in RENKEN, *The Penal Law*, 459-461.

¹³⁸ CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Normae de gravioribus delictis*, 21 May 2010 (=2010 *Normae*), in *AAS*, 102 (2010), 419-430, English translation in RENKEN, *The Penal Law*, 462-473.

¹³⁹ Universal law is an expression which identifies the norms of the Latin Code. See J. ABBASS, "The Roman Rota and Appeals from Tribunals of the Eastern Patriarchal Churches," in *Per*, 89 (2000), 473.

¹⁴⁰ See GREEN, "*Sacramentorum sanctitatis tutela*: Reflections," 123.

¹⁴¹ *2021 Normae*, in *AAS*, 114 (2022), 113-122, RENKEN, *Substantive Law*, 2024, 613-622.

¹⁴² See GREEN, "*Sacramentorum sanctitatis tutela*: Reflections," 128-137.

competence of the Apostolic Penitentiary, observing the *Agendi ratio in doctrinarum examine*.¹⁴³ Both codes, *CCEO*, canon 1152, §2, 1° and *CIC*, canon 1362, §1, 1° acknowledge the reservation of some delicts to the Apostolic See.¹⁴⁴

The DDF, as the Supreme Apostolic Tribunal, retains exclusive competence in the external forum for the judgment over the cases of *graviora delicta*, reserved to this dicastery for both the Latin Church and the Eastern Churches. This Supreme Apostolic Tribunal is competent to adjudicate the delicts mentioned in arts. 2-6. It also adjudicates any other delicts which are connected to those reserved to the DDF, for which a defendant is accused by reason of connection or complicity.¹⁴⁵ No other ordinaries/hierarchs, or inferior tribunals, are considered competent to adjudicate such delicts without prior authorization from the DDF.¹⁴⁶ Also, other dicasteries, with due regard for the competence of the Apostolic Penitentiary, do not have jurisdiction in *graviora delicta* cases. The DDF determines whether to use a judicial process or to proceed by means of an extra-judicial decree.¹⁴⁷ Finally, the DDF is the appellate tribunal for all cases of *graviora delicta*, which have been investigated by means of a judicial penal process or have been treated by means of an extra-judicial penal process.¹⁴⁸

¹⁴³ See *2021 Normae*, art. 1, §1, in *AAS*, 114 (2022), 114, RENKEN, *Substantive Law*, 614.

¹⁴⁴ See *2021 Normae*, art. 7, in *AAS*, 114 (2022), 116, RENKEN, *Substantive Law*, 616.

¹⁴⁵ See *2021 Normae*, art. 9, §§1-2, in *AAS*, 114 (2022), 117, RENKEN, *Substantive Law*, 617; see also *Vademecum*, no. 34, in *AAS*, 114 (2022), 927-928, RENKEN, *Substantive Law*, 631-632.

¹⁴⁶ Cf. *CCEO*, c. 1072; see J.A. RENKEN, “*Normae de gravioribus delictis*: 2010 Revised Version. Text and Commentary,” in *Studies in Church Law*, 6 (2010), 86.

¹⁴⁷ See *2021 Normae*, art. 9, §3, in *AAS*, 114 (2022), 117, RENKEN, *Substantive Law*, 617.

¹⁴⁸ See *2021 Normae*, arts. 2, §2, 16, §2, in *AAS*, 114 (2022), 114 and 119, RENKEN, *Substantive Law*, 614 and 619.

2.2.2.1.1 — Delicts Against the Faith

The first *gravius delictum* is the delict committed against the faith, i.e., heresy, apostasy and schism.¹⁴⁹ The DDF has the duty of, “promoting and safeguarding the integrity of Catholic teaching on faith and morals.”¹⁵⁰ The penalty for the person who commits a delict and does not reconsider, even after he or she is legitimately warned, is a major excommunication. If it is a cleric, he can be punished with other penalties, not excluding removal from the clerical state.¹⁵¹ In the first instance, this *gravius delictum* is adjudicated according to the norm of canon law by the local authority,¹⁵² whether a judicial trial or an extra-judicial process is employed, and concluded with a sentence or a decree.¹⁵³ The right of appeal or recourse is reserved to the DDF.¹⁵⁴

2.2.2.1.2 — Delict Against the Holy Eucharist

The second *gravius delictum* by which the cleric can be removed from the clerical state, is to commit a delict against the sacrament of the Holy Eucharist, “taking or retaining for a sacrilegious purpose or the throwing away of the consecrated species of the Holy Eucharist.”¹⁵⁵ *CCEO*, canon 1442 prescribes:

¹⁴⁹ See *CCEO*, cc. 1436-1437.

¹⁵⁰ *PE*, art. 69, in *AAS*, 114 (2022), 406, *Code of Eastern Churches*, 811-812.

¹⁵¹ Cf. *CCEO*, c. 1436, §1.

¹⁵² See *2021 Normae*, art. 2, §1, in *AAS*, 114 (2022), 114, RENKEN, *Substantive Law*, 614; see also LLOBELL, “Due Process,” 212.

¹⁵³ See PERUMAYAN, “From Reservation to Vigilance,” 115.

¹⁵⁴ See *2021 Normae*, art. 2, §2, in *AAS*, 114 (2022), 114, RENKEN, *Substantive Law*, 614; see also F. LOMBARDI, Note on The Significance of the Publication of the New “Norms Concerning the Most Serious Crimes”, English translation https://www.vatican.va/resources/resources_lombardi-nota-norme_en.html (12 November 2025).

¹⁵⁵ *2021 Normae*, art. 3, §1, 1°, in *AAS*, 114 (2022), 115, RENKEN, *Substantive Law*, 614.

A person who has thrown away the Divine Eucharist or taken or retained it for a sacrilegious purpose is to be punished with a major excommunication and, if a cleric, also with other penalties, not excluding deposition.

In 1999, the Pontifical Council for the Interpretation of Legislative Texts gave an authentic interpretation concerning the meaning of the verb *abicere*.¹⁵⁶

Q. – Whether or not the word “*abicere*” in canons 1367 *CIC* and 1442 *CCEO* should be understood only as the act of throwing away.

R. – Negative and “*ad mentem*”.

The “mind” is that the word “*abicere*” should be considered to include any voluntary and gravely contemptuous action toward the Sacred Species.¹⁵⁷

The Church must maintain vigilance in protecting the sanctity of the Holy Eucharist, safeguarding the proper veneration and the reverence of the Eucharistic presence of Jesus Christ under the Sacred Species.¹⁵⁸ *2021 Normae* clearly indicate that the DDF must proceed with judgment against a cleric who commits any profanity against the Holy Eucharist. Procedural norms must be followed according to art. 10 of *2021 Normae*.¹⁵⁹ If the case warrants, the cleric could not only be punished with a major excommunication, but also removal from the clerical state.¹⁶⁰

2.2.2.1.3 — Delict of Solicitation to Sin Against Chastity

The third *gravius delictum* by which the cleric can be removed from the clerical state, is the delict of, “solicitation to a sin against the sixth commandment of the Decalogue in

¹⁵⁶ See *CIC*, c. 1382, §1.

¹⁵⁷ PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXT, reply, 4 June 1999, in *AAS*, 91 (1999), 918, in *Communicationes*, 31 (1999), 42.

¹⁵⁸ See P.O. AKPOGHIRAN, *Delicta graviora manual. A Commentary on Articles 1-7 of the Normae de gravioribus delictis Congregationi pro doctrina fidei reservatis*, 2nd ed., vol. 1, New Orleans, LA, Guadalupe Book Publishers, 2020, 173.

¹⁵⁹ See F.C. EASTON, “Sacrilège of the Divine Eucharist,” in *Practical Comm*, vol. 2, 2577.

¹⁶⁰ See GREEN, “*Sacramentorum sanctitatis tutela: Reflections*,” 129.

the act, on the occasion, or under the pretext of confession.”¹⁶¹ Confessional solicitation is an external and culpable inducement of a penitent to a sin against chastity. This kind of solicitation is carried out in the confessional, or in the act of confession. The solicitation can be carried out through words, signs, nods, touches or by a written message by the confessor to the penitent in the context of the sacrament of confession, in order that the penitent commit a sin against chastity with the confessor himself, or with a third party.¹⁶²

The crime of solicitation occurs whenever a priest – whether in the act itself of sacramental confession, or before or immediately after confession, on the occasion or under the pretext of confession, or even apart from confession [but] in a confessional or another place assigned or chosen for the hearing of confessions and with the semblance of hearing confessions there – has attempted to solicit or provoke a penitent, whosoever he or she may be, to immoral or indecent acts, whether by words, signs, nods, touch or a written message, to be read either at that time or afterwards, or he has impudently dared to have improper and indecent conversations or interactions with that person.¹⁶³

CCEO, canon 1458 sets that, “[a] priest who in the act, on the occasion, or under the pretext of confession, has solicited a penitent to a sin against chastity is to be punished with an appropriate penalty, not excluding removal from the clerical state.”

2.2.2.1.4 — Delict of Attempted Sacred Ordination of Woman

The fourth *gravius delictum* by which a cleric, i.e., a bishop, can be removed from the clerical state, would involve committing the delict of an attempted sacred ordination of a woman. To protect the nature and validity of the sacrament of sacred orders, the DDF, in

¹⁶¹ *2021 Normae*, art. 4, §1, 4°, in *AAS*, 114 (2022), 115, RENKEN, *Substantive Law*, 615.

¹⁶² See AKPOGHIRAN, *Delicta graviora manual. A Commentary on Articles 1-7*, 199.

¹⁶³ SUPREME SACRED CONGREGATION OF THE HOLY OFFICE, *Instruction on the Manner of Proceeding in Cases Involving the Crime of Solicitation*, 16 March 1962, Vatican City, Vatican Polyglot Press, 1962, English translation https://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html (12 November 2025).

virtue of the special faculty given by the supreme authority of the Church,¹⁶⁴ has decreed in the ordinary session of December 19, 2007, that:

Without prejudice to the prescript of canon 1378 of the *Code of Canon Law*, both the one who attempts to confer a sacred order on a woman, and the woman who attempts to receive a sacred order, incur an excommunication *latae sententiae* reserved to the Apostolic See.

If, in fact, the one who attempts to confer a sacred order on a woman, or the woman who attempts to receive a sacred order, is one of Christ's faithful subject to the *Code of Canons of the Eastern Churches*, that person, without prejudice to the prescript of canon 1443 of the same Code, is to be punished with a major excommunication, the remission of which is also reserved to the Apostolic See (cf. can. 1423, *Code of Canons of the Eastern Churches*).¹⁶⁵

According to *CIC*, canon 1379, §3:

Both a person who attempts to confer a sacred order on a woman, and the woman who attempts to receive the sacred order, incur a *latae sententiae* excommunication reserved to the Apostolic See; a cleric, moreover, may be punished by dismissal from the clerical state.

2021 Normae, art. 5, 2° regarding the Eastern Churches states:

If the one who attempts to confer sacred ordination on a woman or the woman who attempts to receive sacred ordination are members of the Christian faithful subject to the *CCEO*, they are to be punished by a major excommunication, the remission of which is reserved to the Apostolic See.

Because this *gravius delictum* is reserved to the Apostolic See, it can be assumed that the Apostolic See can impose the same measure of punishment as the one imposed on Latin clerics.

The new art. 5 of *2021 Normae* is revised, and it appears that this norm has been changed for the Eastern Churches in comparison with *2010 Normae*, which were similar in terms of the types of punishment, as it pertains to both the Latin and Eastern clerics: “[i]f the guilty party is a cleric he may be punished by dismissal or deposition.”¹⁶⁶

¹⁶⁴ Cf. *CIC*, c. 30.

¹⁶⁵ CONGREGATION FOR THE DOCTRINE OF THE FAITH, *General Decree Regarding the Delict of Attempted Sacred Ordination of a Woman*, 19 December 2007, in *AAS*, 100 (2008), 403, English translation in RENKEN, *The Penal Law*, 270.

¹⁶⁶ *2010 Normae*, art. 5, 3°, in *AAS*, 102 (2010), 424, RENKEN, *The Penal Law*, 467.

2.2.2.1.5 — Delict Against Morals

The fifth *gravius delictum* by which a cleric can be removed from the clerical state, is the delict committed against morality, i.e., the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years.¹⁶⁷

The more grave delicts against morals which are reserved to the judgment of the Congregation for the Doctrine of the Faith are:

1° the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years or with a person who habitually has the imperfect use of reason; ignorance or error on the part of the cleric regarding the age of the minor does not constitute an extenuating or exonerating circumstance;

2° the acquisition, possession, exhibition, or distribution, for purposes of sexual gratification or profit, of pornographic images of minors under the age of eighteen years, in any manner and by any means whatsoever, by a cleric.¹⁶⁸

2021 Normae of art. 6, 1° relate to the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen, which may include pedophilia (the sexual attraction to children of prepubertal age), or ephebophilia, (the sexual attraction to an adolescent teenager). This delict can be homosexual or heterosexual in nature.¹⁶⁹ Furthermore, *2021 Normae* added,¹⁷⁰ namely: “with a person who habitually has the imperfect use of reason; ignorance or error on the part of the cleric regarding the age of the minor does not constitute an extenuating or exonerating circumstance.” This second part of *2021 Normae* of art. 6, 2° has been completely revised.

¹⁶⁷ The age of the minor sexually abused by a cleric has been raised from sixteen to eighteen. See CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Ad exsequendam ecclesiasticam*, in *AAS*, 93 (2001), 787, RENKEN, *The Penal Law*, 460.

¹⁶⁸ *2021 Normae*, art. 6, in *AAS*, 114 (2022), 116, RENKEN, *Substantive Law*, 616.

¹⁶⁹ See GREEN, “*Sacramentorum sanctitatis tutela: Reflections*,” 138.

¹⁷⁰ Cf. *Normae*, art. 4, §1 in WOESTMAN, *Ecclesiastical Sanctions and the Penal Process*, 304-305.

It is an adaptation of *VELM*, and is identical to the contents of the revised Book VI of Latin code,¹⁷¹ and the revised section in *VP* on penal law in Eastern Churches.¹⁷²

The revised *2010 Normae* introduced three new delicts involving minors: “the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology.”¹⁷³ These three delicts could only be addressed canonically after May 21, 2010, when the revised *2010 Normae* took effect.¹⁷⁴

On October 4, 2019, during an audience with the Supreme Pontiff, Pope Francis granted to both Cardinal Pietro Parolin, Secretary of State, and Cardinal Luis Francisco Ladaria, Prefect of the CDF, a rescript of an alteration to *Normae* concerning the age of minors whose pornographic images have been acquired, possessed or distributed by a cleric.¹⁷⁵ Pope Francis amended the law, raising the age of minors from fourteen to eighteen years, for young victims whose pornographic images had been acquired, possessed or distributed by a cleric.¹⁷⁶ The suggestion for raising the age limits originated from the

¹⁷¹ See FRANCIS, Apostolic Constitution on Reforming Book VI of the Code of Canon Law *Pascite gregem Dei*, 23 May 2021, in *AAS*, 113 (2021), 534-537, English translation in RENKEN, *Substantive Law*, 537-540.

¹⁷² “This new canon may have introduced a broader treatment of this matter, the competence of the DDF in this regard is still limited to those cases outlined in art. 6 *SST*. The article currently in force in the *Norms* of *SST* that was promulgated in 2021 included these changes in order to summarize the relevant law (cf. art. 6, 2° *SST*)” (*Vademecum*, no. 6, in *AAS*, 114 (2022), 921, RENKEN, *Substantive Law*, 626).

¹⁷³ *2010 Normae*, art. 6 §1, 2°, in *AAS*, 102 (2010), 424, RENKEN, *The Penal Law*, 467; cf. FRANCIS, Apostolic Letter motu proprio Instituting New Procedures for the Preliminary Investigation of Allegations of the Sexual Abuse of Minors or Other Vulnerable Persons Involving Prelates *Vos estis lux mundi*, 7 May 2019 (= *VELM* 2019), art. 1, §1, a) iii, in *AAS*, 111 (2019), 824, in *Communicationes*, 51 (2019), 24.

¹⁷⁴ See *Vademecum*, no. 7, in *AAS*, 114 (2022), 922, RENKEN, *Substantive Law*, 626.

¹⁷⁵ See FRANCIS, Rescript, *Rescriptum Ex Audientia SS.MI*, 3 December 2019, in *AAS*, 112 (2020), 70, English translation https://www.vatican.va/roman_curia/secretariat_state/2019/documents/rc-seg-st-20191203_rescriptum_en.html (12 November 2025).

¹⁷⁶ See B.S. THARAKUNNEL, “Sexual Abuse of Minors by Clerics: The Disciplinary Directives of Pope Francis,” in *Ius*, vol. 12, no. 1 (June 2021), 53-54.

summit entitled: ‘The protection of minors in the Church,’ where Pope Francis addressed the attendees:

The protection of minors must take into account the new forms of sexual abuse and abuse of all kinds that threaten minors in the settings in which they live and through the new devices that they use. Seminarians, priests, men and women religious, pastoral agents, indeed everyone, must be aware that the digital world and the use of its devices often have a deeper effect than we may think... Brothers and Sisters: crime does not enjoy the right to freedom. There is an absolute need to combat these abominations with utter determination, to be vigilant and to make every effort to keep the development of young people from being troubled or disrupted by an uncontrolled access to pornography, which will leave deep scars on their minds and hearts. We must ensure that young men and women, particularly seminarians and clergy, are not enslaved to addictions based on the exploitation and criminal abuse of the innocent and their pictures, and contempt for the dignity of women and of the human person. Here mention should be made of the new norms on *graviora delicta* approved by Pope Benedict XVI in 2010, which included as a new species of crime “the acquisition, possession or distribution by a cleric of pornographic images of minors... by whatever means or using whatever technology”. The text speaks of minors “under the age of fourteen”. We now consider that this age limit should be raised in order to expand the protection of minors and to bring out the gravity of these deeds.¹⁷⁷

This version of *2021 Normae* introduced the delict against the acquisition, possession – even temporary – or distribution by a cleric of pornographic images of minors under the age of eighteen, for purposes of sexual gratification.

Neither the *CIC*, the *CCEO*, nor the present *2021 Normae* give a definition of the delict of the sexual abuse of minors due to the existence of specific differences in each country regarding the delineation of the delict committed against minors.¹⁷⁸ Each jurisdiction includes elements of discrepancy, which constitute the sexual abuse of minors.¹⁷⁹ Therefore, the typology of the delict against the sixth commandment of the Decalogue is quite broad. This delict can include sexual intercourse, which can be

¹⁷⁷ FRANCIS, Meeting the Protection of Minors in the Church Eucharistic Concelebration, 21-24 February 2019, no. 7, English translation https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190224_incontro-protezioneminori-chiusura.html (12 November 2025).

¹⁷⁸ “[T]here is not one consistent and coherent meaning for ‘crimes against the sixth commandment’” (W.H. WOESTMAN, “An Offence against the Sixth Commandment of the Decalogue,” in F.S. PEDONE and P.D. COUNCE (eds.), *Roman Replies and CLSA Advisory Opinions 2006*, Washington, DC, CLSA, 2006, 86).

¹⁷⁹ See AKPOGHIRAN, *Delicta graviora manual. A Commentary on Articles 1-7*, 217-218.

consensual or non-consensual, physical contact for sexual gratification, exhibitionism, masturbation, the production of pornography, solicitation to prostitution, conversations and/or propositions of a sexual nature.¹⁸⁰ Therefore, the production of pornography involving minors below the age of eighteen years, or with a person who habitually has the imperfect use of reason, relates to the typology of the delict listed in nos. 1-4 of the present *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics* (version 2.0) (=Vademecum), and is to be dealt with if it occurred after May 21, 2010.¹⁸¹

The CDF defines this delict as: “contact or interaction between a minor and an adult when the minor is being used for sexual stimulation of the adult. This occurs when an adult engages a minor in any sexual activity.”¹⁸²

From June 1 to December 31, 2019, the acquisition, possession or distribution of pornographic material involving minors, between fourteen and eighteen years of age, by clerics, members of institutes of consecrated life or societies of apostolic life, referred to delicts for which other dicasteries are competent.¹⁸³ However, from January 1, 2020, after Pope Francis raised the age to eighteen years, the DDF became competent for these delicts when committed by clerics.¹⁸⁴

Whoever commits the delicts mentioned in art. 2-6, besides what is established for individual delicts in the *CIC* and in the *CCEO*, as well as in these present Norms, is to be punished, as the

¹⁸⁰ See *Vademecum*, no. 2, in *AAS*, 114 (2022), 920, RENKEN, *Substantive Law*, 625.

¹⁸¹ See *Vademecum*, no. 7, in *AAS*, 114 (2022), 922, RENKEN, *Substantive Law*, 626.

¹⁸² “Sexual Abuse of a Minor” in CONGREGATION FOR THE DOCTRINE OF THE FAITH, Glossary of Terms, https://www.vatican.va/resources/resources_glossary-terms_en.html (12 November 2025).

¹⁸³ Cf. *VELM 2019*, arts. 1, 7, in *AAS*, 111 (2019), 824-825 and 827-828, in *Communicationes*, 51 (2019), 24-25 and 28.

¹⁸⁴ See *Vademecum*, no. 6, in *AAS*, 114 (2022), 921, RENKEN, *Substantive Law*, 626.

case warrants, with a just penalty according to the gravity of the crime; if committed by a cleric, he may also be punished by dismissal or deposition from the clerical state.¹⁸⁵

The gravity of delict is measured by the degree of malice of the offender, and by the extent of the harm done.¹⁸⁶ Even if the canonical sanctions for the violation of *graviora delicta* against morals is an indeterminate penalty, the determinate penalty, i.e., deprivation, can be imposed on the offender if the gravity of the delict warrants it.¹⁸⁷

The *gravius delictum* against the sixth commandment of the Decalogue, committed with a minor below the age of eighteen years or with a person who habitually has the imperfect use of reason, is treated in most civil jurisdictions¹⁸⁸ as a criminal action, and is punished according to the criminal law of each state or country.¹⁸⁹ The acquisition, possession or distribution of pornographic images of minors may also be a civil crime, punishable by law in some countries.¹⁹⁰

2.2.2.2 — Apostolic Letter *motu proprio Vos estis lux mundi*

On May 7, 2019, Pope Francis issued, *ad experimentum*, his apostolic letter *VELM*, which on March 25, 2023, was definitively promulgated. *VELM* is divided into two main parts; the first contain general provisions, i.e., arts. 1-5 which offer a review of substantive law on sexual abuse. The second contains provisions concerning bishops and their equivalents, i.e., arts. 6-20, which include new procedural laws governing the investigation

¹⁸⁵ 2021 *Normae*, art. 7, in *AAS*, 114 (2022), 116, RENKEN, *Substantive Law*, 616.

¹⁸⁶ See DALY, “Dismissal from the Clerical State,” 48.

¹⁸⁷ See AKPOGHIRAN, *Delicta graviora manual. A Commentary on Articles 1-7*, 244.

¹⁸⁸ See C.J. SCICLUNA, “The Impact of Pedophilia: Crisis on the Universal Church,” in *Ius*, vol. 2, no. 2 (December 2011), 264.

¹⁸⁹ See RENKEN, “*Normae de gravioribus delictis*: 2010 Revised Version,” 79.

¹⁹⁰ See GREEN, “*Sacramentorum sanctitatis tutela*: Reflections,” 139.

of bishops, and their equivalents, both in the Latin Church and in the Oriental Catholic Churches, for matters which involve sexual abuse.¹⁹¹

2.2.2.2.1 — Subject

VELM in the general provisions identifies the subjects which are bound by it, and the delicts for which these norms may be applied.¹⁹²

The first group to whom the norms are applicable, refers to clerics, i.e., sacred ministers, who are chosen by the competent ecclesiastical authority, and are deputed through a gift of the Holy Spirit received in sacred ordination.¹⁹³

The second group to whom these norms are applicable, is members of institutes of consecrated life or societies of apostolic life, and moderators of international associations of the faithful, recognized or erected by the Apostolic See. In this group, *VELM* includes religious institutes, secular institutes, in which members have an obligation to take the vows of the evangelical counsels, and the societies of apostolic life.¹⁹⁴ Moreover, *VELM* includes moderators who direct international associations of the faithful, which are recognized or erected by the Apostolic See.

The second part of *VELM* identifies another group of subjects who fall within the scope of the application of these norms,¹⁹⁵ such as authorities in the Church; these are the bishops and their equivalents. By their actions, or their omissions, they can cause

¹⁹¹ See D. THOMAS, “*Vos estis lux mundi*: Text and Commentary – Part I,” in *Ius*, vol. 10, no. 2 (December 2019), 254.

¹⁹² Cf. *VELM* 2023, art. 1, §1, in *AAS*, 115 (2023), 395, RENKEN, *Substantive Law*, 660.

¹⁹³ See *CCEO*, c. 323, §1.

¹⁹⁴ See THOMAS, “*Vos estis lux mundi*: Part I,” 256-257.

¹⁹⁵ See *ibid*, 270.

interference with, or avoidance of, civil or canonical investigations regarding delicts against the sixth commandment of the Decalogue, as referred to in the first part of the first article.¹⁹⁶

The procedural norms referred to in this title concern the delicts referred to in article 1, carried out by:

- a) Cardinals, Patriarchs, Bishops and Legates of the Roman Pontiff;
- b) clerics who are, or who have been, the pastoral heads of a particular Church or of an entity assimilated to it, Latin or Oriental, including the Personal Ordinariates, for acts committed *durante munere*;
- c) clerics who are or who were entrusted with the pastoral leadership of a Personal Prelature, for acts committed *durante munere*;
- d) clerics who are or who were leaders of public clerical associations with the faculty of incardination, for acts committed *durante munere*;
- e) those who are or who were Supreme Moderators of Institutes of Consecrated Life or of Societies of Apostolic Life of Pontifical right, as well as of monasteries *sui iuris*, for acts committed *durante munere*.¹⁹⁷

VELM states that a person is considered guilty who commits delicts or another act (e.g., immoral acquisition, distribution, etc.) against the sixth commandment of the Decalogue with minors, or with a person who habitually has imperfect use of reason, or with a vulnerable adult. Moreover, the authorities who protect the guilty person by their interference in order to avoid civil or canonical investigations warrant appropriate penalties.¹⁹⁸ This delict, the actions or omissions intended to interfere with, or avoid, civil or canonical investigations, regarding delicts against the sixth commandment of the Decalogue carried out by the authorities in the Church listed in this article, is not a delict reserved to the DDF. The competent dicastery must deal with this issue in accordance with

¹⁹⁶ See W.B. SOULE, “Bishops and the Loss of the Clerical State,” in *StC*, 54 (2020), 300-301, 302.

¹⁹⁷ *VELM 2023*, art. 6, in *AAS*, 115 (2023), 398, RENKEN, *Substantive Law*, 663.

¹⁹⁸ See THARAKUNNEL, “Sexual Abuse of Minors by Clerics,” 51.

the procedures provided by the law. Major superiors of religious institutes and societies of apostolic life of pontifical right, are not referred to in article 6.¹⁹⁹ The procedure outlined in the second part of *VELM* is applicable to the supreme moderators of institutes of consecrated life and societies of apostolic life of pontifical right, of monasteries *sui iuris* and to lay faithful who are, or were, moderators of international associations of the faithful, recognized or erected by the Apostolic See.²⁰⁰

2.2.2.2.2 — Delicts

VELM, art. 1, §1 describes the delicts:

a)

* a delict against the sixth commandment of the Decalogue committed through violence or threat or through abuse of authority, or by forcing someone to perform or submit to sexual acts;

** a delict against the sixth commandment of the Decalogue committed with a minor or with a person who habitually has imperfect use of reason or with a vulnerable adult;

*** the immoral acquisition, possession, exhibition or distribution, in any way or by any means, of pornographic images of minors or of persons who habitually have imperfect use of reason;

**** the recruitment or inducement of a minor or of a person who habitually has imperfect use of reason or of a vulnerable adult to pose in a pornographic manner or to participate in real or simulated pornographic exhibitions;

b) conduct carried out by the subjects referred to in art. 6, consisting of actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against one of the subjects indicated in §1 regarding the delicts referred to in letter a) of this paragraph.

¹⁹⁹ A diocesan bishop or eparchial bishop or one equal to a bishop, i.e., one who even holds a temporary title and is responsible for a Particular Church or eparchy/diocese, and those who are by law equal to them, namely a major superior of religious institutes and societies of apostolic life of pontifical right, could be legitimately removed from office, when one is objectively lacking the diligence that his pastoral office demands of him in a very grave manner, even without serious moral fault on his part. Cf. FRANCIS, *Come una Madre amorevole*, art. 1, in *AAS*, 108 (2016), 715-716, RENKEN, *Substantive Law*, 601-602.

According to *CCEO*, canon 1061, persons who do not have superior authority below Roman Pontiff are to be adjudicated by the tribunals of the Apostolic See. The major superiors would be brought before the tribunal of Roman Rota. See GREEN, “*Sacramentorum sanctitatis tutela: Reflections*,” 127.

²⁰⁰ See THOMAS, “*Vos estis lux mundi: Part I*,” 270.

Neither the *CIC* nor the *CCEO* provide a thorough definition of the meaning of the delicts against the sixth commandment of the Decalogue. The Eastern Code describes this delict as, “an external sin against chastity.”²⁰¹

VELM states that the delict against the sixth commandment of the Decalogue consists of the following: an individual is forced to perform or submit to sexual acts, which could include violence or threat, or through abuse of authority. The use of force or threats point to the physical and psychological aspects.²⁰² The second delict is, performing sexual acts with a minor, a person who habitually has imperfect use of reason or with a vulnerable adult.

VELM, art. 1, §2 outlines:

a) “*minor*”: means any person under the age of eighteen; equivalent to a minor is a person who habitually has imperfect use of reason;

b) “*vulnerable adult*”: means 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.

Established by *SST* and *2021 Normae*, *VELM* confirms that a minor is a person who is under the age of eighteen.²⁰³ A person who habitually has imperfect use of reason equates to a minor.²⁰⁴ A vulnerable adult is a person who is in a state of weakness, physical or mental incapacity, limits his or her ability to understand, desire, or otherwise resist a delict.

²⁰¹ “*peccato externo contra castitatem*” (*CCEO*, c. 1453, §1).

²⁰² See THOMAS, “*Vos estis lux mundi*: Part I,” 259.

²⁰³ “A person who has complete the eighteenth year of age has reached majority; below this age, a person is a minor” (*CCEO*, c. 909, §1).

²⁰⁴ See *2010 Normae*, art. 6, §1, 1°, in *AAS*, 102 (2010), 424, RENKEN, *The Penal Law*, 467.

According to *CCEO*, canon 909, §3, a person of any age who habitually lacks the use of reason is equated with infants, i.e., such person is incapable of personal responsibility (*non sui compos*). Cf. M.L. BARTCHAK, “Child Pornography and the Grave Delict of an Offence against the Sixth Commandment of the Decalogue Committed by a Cleric with a Minor,” in *J*, 72 (2012), 196.

The third and fourth delicts that *VELM*, art. 1, §2 deals with concern child pornography:

c) “*child pornography*”: means any representation of a minor, regardless of the means used, involved in explicit sexual activities, whether real or simulated, and any representation of sexual organs of minors for lewd purposes or for profit.

The acquisition of, exhibition (showing something for someone to view),²⁰⁵ possession (“detention or use of a physical thing with the intent to hold it as one’s own”),²⁰⁶ or distribution of child pornography, are punishable delicts if they are committed for lustful gratification or profit.²⁰⁷ Recruitment (the process of hiring a minor or a person who habitually has imperfect use of reason, or a vulnerable adult to make pornographic material), or inducement (persuading a minor or a person who habitually has imperfect use of reason, or a vulnerable adult to participate in pornographic exhibitions of child pornography), is a punishable delict against the sixth commandment of Decalogue. These actions can be carried out in various ways, e.g., offering money, brain washing, blackmailing, etc.²⁰⁸

The magisterium of the Church teaches:

Pornography consists in removing real or simulated sexual acts from the intimacy of the partners, in order to display them deliberately to third parties. It offends against chastity because it perverts the conjugal act, the intimate giving of spouses to each other. It does grave injury to the dignity of participants (actors, vendors, the public), since each one becomes an object of base pleasure and illicit profit for others. It immerses all who are involved in the illustration of a fantasy world. It is a grave offence.²⁰⁹

²⁰⁵ See THOMAS, “*Vos estis lux mundi*: Part I,” 267.

²⁰⁶ B.B. GARNER (ed.), *Black’s Law Dictionary*, 11th ed., St. Paul, MN, Thomson Reuters, 2019, 1408; cf. BARTCHAK, “Child Pornography,” 209-212.

²⁰⁷ See BARTCHAK, “Child Pornography,” 192.

²⁰⁸ See THOMAS, “*Vos estis lux mundi*: Part I,” 268.

²⁰⁹ *Catechismus Catholicae Ecclesiae*, Vatican City, Libreria editrice Vaticana, 1997, English translation *Catechism of the Catholic Church*, 2nd ed., Ottawa, Canadian Conference of Catholic Bishops, 2006, no. 2354.

VELM in the second part (b) of art. 1, §1, describes delicts performed by authorities in the Church: actions and omissions in order to interfere with, or to avoid, civil or canonical investigations, whether administrative or penal, for the delicts referred to in the same article in (a). These are delicts against the sixth commandment of the Decalogue, which consist of forcing an individual into sexual acts, sexual abuse of minors, or persons who habitually have imperfect use of reason, or vulnerable adults, and finally, the delict of child pornography.²¹⁰ Furthermore, *VELM* acknowledges that those who commit this delict are accountable to civil authority as well,²¹¹ in such a manner that recognizes the primacy of the authority of civil law in this matter.²¹²

In addition to the cases already foreseen in law, canon law prescribes that anyone who has misused power, an office, a ministry or another function in the Church, by action or omission, is to be punished with an appropriate penalty, not excluding removal from the clerical state, unless another penalty has been established in law or precept for such an abuse.²¹³

2.3 — Authority to Dismiss Religious from Religious Institute

CCEO, canon 499 highlights the fact that the higher authority – the major superior (with the cooperation of his or her council) of each religious institute, is competent to issue

²¹⁰ See THOMAS, “*Vos estis lux mundi*: Part I,” 269.

²¹¹ Cf. W.H. WOESTMAN, “Secrecy Concerning Delicts,” in A.J. ESPELAGE (ed.), *CLSA Advisory Opinions 2001-2005*, Alexandria, VA, CLSA, 2006, 82.

²¹² See THARAKUNNEL, “Sexual Abuse of Minors by Clerics,” 53.

²¹³ See *CCEO*, c. 1464, §1; cf. *CIC*, c. 1389.

a decree of dismissal of a guilty religious. The execution of the decree of dismissal must follow norms of canon law.

2.3.1 — Role of the Major Superior in the Dismissal of a Member

The competent authority for issuing the decree of dismissal of a religious with perpetual profession will be one which coincides with the condition of the religious.²¹⁴ *CCEO*, canon 500, §1 indicates that the dismissal of a monk who belongs to a monastic confederation, wherein such competence is attributed to its president. If the monk belongs to a monastery *sui iuris*, the responsibility to issue a possible decree of dismissal rests with its superior. In the circumstance of the dismissal of a religious from an order or a congregation, *CCEO*, canon 553 establishes: “[t]he dismissal of a member in perpetual vows is within the competence of the superior general; in other respects, cann. 500-503 are to be observed.”

In cases of *ipso iure* dismissal,²¹⁵ the dismissal of the guilty member from a religious institute (monastery, order or congregation), takes place automatically without any procedure,²¹⁶ i.e., by canon law and not by the will of the competent superior.²¹⁷ The religious is no longer a member of the religious institute itself. In recognition of the dismissal and its legality, it is necessary that the competent superior, such as the president of the monastic confederation, superior of the monastery *sui iuris*, or major superior of the order or congregation, apply the appropriate procedures which follow the norms of the

²¹⁴ See PUJOL, *La vita religiosa orientale*, 388.

²¹⁵ See *CCEO*, c. 497, §1.

²¹⁶ See THATTIL, “Distinct Motives for the Dismissal of Religious,” 211.

²¹⁷ See PUJOL, *La vita religiosa orientale*, 377.

CCEO and the particular law of the religious institute. This includes the statutes of the monastic confederation, the typicon of the monastery *sui iuris*, or the statutes of the order or congregation. The competent superior issues a declaration of the fact of the dismissal, as soon as possible, informing the authority to which the monastic confederation, monastery *sui iuris*, order or congregation is immediately subject.²¹⁸ This is not a judicial sentence, but a public statement of fact.²¹⁹

In the case of expulsion, the competent superior in a monastic confederation is the president of the monastic confederation. In the monastery *sui iuris*, the competent authority is the superior of the monastery *sui iuris*, who must intervene by ordering that the religious be stripped of his or her habit, and immediately expelled from the monastery.²²⁰ In a dependent monastery, the superior of the dependent monastery can and must take appropriate measures, immediately informing the hegumen of the monastery *sui iuris*, who must confirm the expulsion and removal of the habit of a monk.²²¹ If the religious belongs to an order or congregation, the responsibility falls within the competence of the major superior.²²² If there is danger in delay and there is no time to reach the major superior, the local superior, with the consent of his or her council, can expel a member, notifying the major superior at once, and following *CCEO*, canon 551 as well as the particular law of the religious institute.

²¹⁸ See *CCEO*, cc. 497, §2, 551.

²¹⁹ See SALACHAS, *La vita consacrata*, 183.

²²⁰ See *CCEO*, c. 498, §1.

²²¹ See PUJOL, *La vita religiosa orientale*, 381.

²²² See ABBASS, “*Ipsa Iure* Dismissal and Expulsion,” 1025.

When dismissal of a temporarily professed religious, or one who definitively assumed the religious state is imminent, particularly for grave, external and imputable causes, which may cause scandal and harm to those belonging to the religious institute, the authority competent for dismissal of a monk lies within the jurisdiction of the president of the monastic confederation or the superior of a monastery *sui iuris*²²³ in accordance with canon law and the particular law of the monastery.²²⁴ For the dismissal of a religious member who belongs to an order or a congregation, the superior general is responsible for the judgment.²²⁵

However, for a temporarily professed member, if there is no urgency to proceed, the major superior, i.e., the provincial superior or superior general in an order or congregation,²²⁶ and the president of the monastic confederation, or the superior of the monastery *sui iuris* in which there is a temporary profession,²²⁷ can, for a just cause, which is not specified in canon law, and having consulted the council, exclude a member with temporary vows from the renewal of subsequent temporary vows or from making a perpetual profession.²²⁸ Clement Pujol emphasized that the case could very well be that of a non-observance of the rules, especially after repeated warnings; or of a need arising in the member's family for his or her presence or support, etc. Although *CCEO*, canon 547, §1 utilizes the term *potest*, this does not necessarily mean that the major superior is fully free to make a decision, because he or she must consider the good of the individual and

²²³ See *CCEO*, c. 500, §1.

²²⁴ See ABBASS, “*Ipsa Iure* Dismissal and Expulsion,” 1025.

²²⁵ See *CCEO*, c. 553.

²²⁶ See *CCEO*, c. 547, §1.

²²⁷ See *CCEO*, c. 465.

²²⁸ See *CCEO*, c. 547, §1.

that of the religious institute, which can then place upon him or her the obligation to use their own competence and discretion.²²⁹

2.3.2 — Role of the Major Superior’s Council

CCEO, canon 422, §1 requires that every superior who is endowed with personal power is to have a council. The councillors assist the superior with objective and impartial counsel in carrying out superior responsibilities, i.e., the councillors provide consent or advice to make proper decision of the superior in certain matters in accord with canon law and particular law.²³⁰ A major superior, i.e., the president of the monastic confederation, the superior of the monastery *sui iuris* or the superior general of the order or congregation, require the consent of his or her council in order to act in a valid manner concerning the dismissal of a member of the religious community.²³¹ In this case, the council must consist of at least four members and have the major superior as president.²³² If one or more

²²⁹ See PUJOL, *La vita religiosa orientale*, 384.

²³⁰ See R.M. McDERMOTT, “The Role of Councils in Religious Institutes: Code of Canon Law and Code of Canons of the Eastern Churches,” in *Studies in Church Law*, 5 (2009), 206-207; see also CTRL, no. 50, in *CLD*, vol. 10, 66.

²³¹ “If it is established by law that, to place a juridic act, an authority needs the consent or counsel of certain persons as individuals: 1° if consent is required, the juridic act of an authority who does not seek the consent of those persons or who act contrary to their opinion or the opinion of any of them is invalid” (*CCEO*, c. 934, §2).

²³² Canonists within the Latin church dedicate considerable effort to the genuine interpretation of *CIC*, canon 127 §1, which was issued by the Pontifical Council for the Authentic Interpretation of the Code of Canon Law on May 14, 1985, and subsequently promulgated on August 1, 1985. The Pontifical Council was asked: “Utrum cum iure statuatur ad actus ponendos Superiorem indigere consensus alicuius Collegii vel personarum coetus, ad normam c. 127, §1, ipse Superior ius habeat ferendi suffragium cum aliis, saltem ad paritatem suffragiorum dirimendam.” The Pontifical Council replied: “Negative.” See PONTIFICAL COUNCIL FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, reply, 5 July 1985, in *AAS*, 77 (1985), 771, English translation in W.A. SCHUMACHER and J.J. CUNEO (eds.), *Roman Replies and CLSA Advisory Opinions 1986*, Washington, DC, CLSA, 1986, 91.

Both *CIC*, canon 127, §1, and the *CCEO*, canon 934, §2 concur that an absolute majority vote is necessary for a juridic act to be deemed valid when the consent of the council is required. Nevertheless, in accordance with Eastern tradition, the superior is considered a member of the council and is entitled to vote. See ABBASS, *The Consecrated Life*, 262-266.

members of the prescribed number is absent, other members of the religious institute are to be called, following the norms given by the typicon or statutes. These councillors, having considered the reasons for dismissal, must give their judgment in secret according to their conscience.²³³

The competent superior ought to follow the judgment of his or her council. If the judgment of the councillors is contrary to dismissal, all the facts must be filed. If the opinion of the councillors is in favour of dismissal, the competent superior, with the consent of the councillors, issues a decree of dismissal.²³⁴

After receiving the consent of the councillors, the competent superior issues the decree, in which at least two causes²³⁵ of dismissal must be documented, at least summarily. However, if public or private danger may ensue, it will not be prudent to indicate the causes; therefore, they must be recorded in a document which is under the seal of secrecy²³⁶ in case of an appeal against the decree. Consequently, they must be brought to the attention of the authority to which recourse is to be made.²³⁷ All steps that lead to

Furthermore, *CCEO*, canon 934, §1 was not the subject in the 1985 authentic interpretation provided by the Pontifical Council, which occurred prior to the promulgation of the Eastern Code. *CCEO*, canon 934, §1 does not restrict the president of the group from participating in voting. Therefore, this canon is not the subject of the authentic interpretation of *CIC*, canon 127, §1. Preventing the president of the group from exercising the right to vote contradicts Eastern discipline, which has consistently acknowledged the superior's right to vote alongside the council when the latter's consent is necessary for executing a juridic act. This practice is recognized within the canons pertaining to consecrated life in the Eastern Code. See M. STOKLASA, "Il consiglio del superiore provinciale," in *Vita consacrata*, vol. 3, no. 1 (2008), 66-67.

²³³ See *CCEO*, cc. 500, §1, 553.

²³⁴ See PUJOL, *La vita religiosa orientale*, 389.

²³⁵ Cf. *CCEO*, c. 500, §2, 1°.

²³⁶ A major superior similar to an eparchial bishop is to have a secret archive or safe, in which the major superior keeps documents that are under the seal of secrecy. The key to the archive or safe is held by him or her alone. When the office of major superior is vacant, the key is held by the vicar. The documents concerned, or copies of them, are not to be removed from the seat of the curia. Cf. *CCEO*, cc. 259, §1, 260, §§1-2.

²³⁷ See *CCEO*, c. 1517.

dismissal of a member from the religious institute must be carried out according to the rule of law.

When a religious member is dismissed *ipso iure* from the religious institute, the competent superior, without delay, and after having consulted the council²³⁸ and collecting the proofs, must issue a declaration of the facts, so that the dismissal is juridically established.²³⁹ Canon law neither demands the consent of the council nor indicate that the council must consist of at least five members, including the presiding major superior. However, before issuing a declaration of the fact of dismissal, in order that the declaration be established juridically, canon law demands the collection of proof of the abandonment of the faith, or provision of a public document from a marriage ceremony;²⁴⁰ the competent superior merely consults the council. In this case, the declaration of the fact of dismissal does not amount to a decree of dismissal.²⁴¹ This declaration is not considered to be a dismissal; it is simply a declaration of dismissal, already enforced by the law itself, and the competent superior cannot render a decision.

In the event of a religious member being expelled from the religious institute, the president of the monastic confederation, or the superior of the monastery *sui iuris*, with the consent of his or her council, must intervene by ordering that the religious be stripped of his or her habit, and immediately expelled from the monastery.²⁴² If the religious belongs to an order or a congregation, this procedure falls within the competence of the major

²³⁸ Cf. *CCEO*, c. 934, §2, 2°.

²³⁹ See G. GIROTTI and J. KHOURY, Commentary on c. 497, §2, in PINTO, *Commento CCEO*, 409.

²⁴⁰ See HOLLAND, "Canonical Dismissal," 63.

²⁴¹ See ABBASS, *The Consecrated Life*, 251.

²⁴² See *CCEO*, c. 498, §1.

superior.²⁴³ However, a difference is noted; if there is a question of expulsion the major superior requires the consent of his or her council. If there is danger in delaying and there is no time to reach the major superior, the local superior, with the consent of his or her council, can expel a member, notifying the major superior at once.²⁴⁴

2.3.3 — Role of the Hierarchy in Confirming the Decision

Although the dismissal of a religious is an internal affair in a religious institute, the *CCEO*, in recognizing and granting to the competent superior the faculty of dismissal, safeguards the rights of the dismissed religious. Before the decree is executed, the intervention of an external hierarchical authority is required.²⁴⁵ In concrete terms, this requires the decree to be confirmed by the authority to which the religious institute is subject.²⁴⁶

If it concerns the dismissal of a monk who belongs to the monastery *sui iuris* of eparchial right, which is located within the territorial boundaries of the patriarchate, the decree of dismissal must be confirmed by the patriarch in order to be valid.

Pope Francis, in his Apostolic Letter *motu proprio Competentias quasdam decernere* (=CQD), 11 February 2022, amended *CCEO*, canon 499:

A member can be dismissed during temporary profession by the superior of the monastery *sui iuris* with the consent of his or her council according to can. 552 §§2 and 3, but, for validity,

²⁴³ See ABBASS, “*Ipsa Iure* Dismissal and Expulsion,” 1025.

²⁴⁴ See *CCEO*, c. 551.

²⁴⁵ See PUJOL, *La vita religiosa orientale*, 389.

²⁴⁶ Cf. *CCEO*, c. 500, §4; see MCDERMOTT, “The Vigilance of the Diocesan or Eparchial Bishop,” 169.

The procedure for validly deciding on dismissal is as follows: (1) a written responses given by the member along with all case documents is to be forwarded to the competent superior; (2) the decree of dismissal cannot be executed unless it has been approved by the authority to which the religious institute is subject. See G. GIROTTI and J. KHOURY, Commentary on c. 498, in PINTO, *Commento CCEO*, 413.

the dismissal must be confirmed by the patriarch if particular law so establishes for monasteries situated within the territorial boundaries of the patriarchal Church.

In the amendment of this canon, Pope Francis aimed to protect the unity of discipline within the universal Church, as well as the executive power in the local Churches and ecclesial institutions. Pope Francis enabled local authorities, i.e., eparchial bishops, major superiors, to proceed more rapidly and more effectively.²⁴⁷ Canon law still requires that, “if particular law so establishes,” the dismissal of a monk, who is a member of a monastery *sui iuris* or a monastic confederation, within the territorial boundaries of the patriarchate for validity, the confirmation of the decree must be the responsibility of the patriarch.²⁴⁸ However, the Eastern Code does not specify whether the bishop or the patriarch is competent when it comes to the dismissal of a member of a monastery of pontifical right. Jobe Abbass presumes: “it is the bishop’s competence to grant the indult in such case, even for a monastery of pontifical right.”²⁴⁹

If it concerns the dismissal of the member who belongs to an order or a congregation, the decree of dismissal is considered to be an internal affair. Canon law no longer requires a confirmation of the decree of dismissal, whether from the Apostolic See, patriarch or the

²⁴⁷ See FRANCIS, Apostolic Letter *motu proprio* Introducing Changes to Some Norms of the Code of Canon Law and the Code of Canons of the Eastern Churches *Competentias quasdam decernere*, 11 February 2022 (=CQD), in *AAS*, 114 (2022), 290, in *Communicationes*, 54 (2022), 84.

²⁴⁸ See PUJOL, *La vita religiosa orientale*, 383; see also HOLLAND, “Canonical Dismissal,” 78.

The Pontifical Commission for the Authentic Interpretation of the Code of Canon Law resolved the matter stating that the confirmation was to be received before notifying the individual concerned. This may be applied to all religious institutes in the Eastern Churches where the confirmation of dismissal is in force.

D. Utrum decretum dimissionis iuxta can. 700 CIC a Moderatore supremo prolatum dimisso notificandum sit ante Sanctae Sedis confirmationem, aut post eiusdem confirmationem.

R. Negative ad primam partem; affirmative ad alteram.

(*AAS*, 78 (1986), 1323).

²⁴⁹ J. ABBASS, “Dismissal of Members in Temporary Vows,” footnote 120, in *Practical Comm*, vol. 1, 956.

eparchial bishop.²⁵⁰ Following *CCEO*, canon 501, §2, “[...], the member can, within thirty days, either make recourse with suspensive effect against the decree of dismissal or request that the case be handled judicially.”

If it concerns the dismissal of the member who belongs to a monastic confederation, all will depend on whatever the jurisdiction of the monastic confederation is, whether of pontifical, patriarchal or eparchial right. If the monastic confederation is located within the territorial boundaries of a patriarchate, the statutes, according to the particular law of its own Church *sui iuris*, will outline who is competent to confirm the decision.

The decree of dismissal, *CCEO*, canons 501, §§1-2 and 553, after it is signed by the competent authority as soon as possible must be executed (the decree of dismissal is communicated to the dismissed religious),²⁵¹ so that a member can either make recourse or request that the case be handled judicially.

Recourse against a decree of dismissal, must be made within thirty days from the notification of the decree and has the effect of suspension of the decree of dismissal. Pope Francis in motu proprio *Expedit ut iura*, extended the time duration to lodge the recourse or to request that the case be handled judicially, which now are higher law (*ius*) of the Eastern Code, to better protect “the rights of the person, and that a less restrictive modality of the terms of transmission of the appeal would allow the person concerned to be able to

²⁵⁰ See *CQD*, art. 7, in *AAS*, 114 (2022), 293, in *Communicationes*, 54 (2022), 87.

²⁵¹ The *PCCICOR*, the *Coetus de monachis ceterisque religiosis* formulates the canon in this manner: The decree of dismissal is to be communicated to the member concerned as soon as possible, giving him the faculty of making recourse, within ten days, to the Apostolic See or to the patriarch, with suspensive effect. See *Nuntia*, 6 (1978), 55, c. 1, §2.

better evaluate the charges against him, as well as to be able to use more appropriate modes of communication.”²⁵²

The dismissed religious member who belongs to a religious institute of pontifical, patriarchal or eparchial right, and whose monastery or religious house is located within the territorial boundaries of the patriarchal Church, is allowed to make recourse, whether to the Apostolic See or the patriarch,²⁵³ or to request that his or her case be considered in a judicial²⁵⁴ manner.²⁵⁵

2.4 — Effects of Dismissal

A lawfully dismissed member from a monastic confederation, a monastery *sui iuris*, or from an order or a congregation, is released from the bonds and obligations arising from his or her profession.²⁵⁶ *CCEO*, canon 502 states:

By legitimate dismissal, excluding the dismissal mentioned in can. 497, all bonds as well as obligations arising from monastic profession cease by the law itself, and, if the member has been constituted in a sacred order, can. 494 is to be observed.

A member who is dismissed from any religious institute based on *CCEO*, canon 497, is not freed from bond of religious profession.²⁵⁷ The study group during the *denua*

²⁵² FRANCIS, Apostolic Letter *motu proprio* Modifying the Terms of Recourse of a Member Dismissed from an Institute of Consecrated Life *Expedit ut iura*, 3 April 2023, in *AAS*, 115 (2023), 405-406, in *Communicationes*, 55 (2023), 59.

²⁵³ Even if a religious individual is dismissed from an institution of pontifical right domiciled within territorial boundaries of the patriarchal Church and the decree is subsequently confirmed by the Apostolic See, this distinctive Eastern norm, as a notable implementation of the principle of subsidiarity, entrusts the recourse to the patriarch. See J. ABBASS, “Recourse against Dismissal Decree,” in *Practical Comm*, vol. 1, 961.

²⁵⁴ The study group *denua recognitio* admitted, although a judicial process undoubtedly would represent an innovation, which “remains somewhat perplexed about the possibility that an administrative act be submitted to a regular trial in a tribunal” (*Nuntia*, 16 (1983), 70).

²⁵⁵ See PUJOL, *La vita religiosa orientale*, 389; see also ABBASS, “The Missing Link in the Legislative History of the CCEO Canons,” 176.

²⁵⁶ See NEDUNGATT, *A Guide to the Eastern Code*, 375.

²⁵⁷ See ABBASS, “Revising the Eastern Canons on the Consecrated Life,” 117.

recognitio of the 1980 Schema decided that a member who commits delicts, whether ... is still bound by the bond of monastic profession.²⁵⁸ The *ipso iure* dismissal is considered as an extraordinary circumstance in the Christian East. Eastern law does not enforce automatic penalties in order to safeguard fundamental human rights, including the right of self-defence. Furthermore, Eastern Code emphasizes the medicinal function of canonical punishment.²⁵⁹ The provision of *ipso iure* dismissals clearly indicates a punitive or vindicative intent.²⁶⁰

The dismissal of a member from a religious institute also entails a change in the burdens of the dismissed religious, whose condition has changed. When the dismissal has been legitimately carried out, that is, the precepts of the law have been observed, the religious is declared free from all bonds and obligations derived from his or her own religious profession. Dismissed religious members return to the world.²⁶¹

2.4.1 — Bond, Obligations and Rights

The dismissal from the religious state, when legitimately imposed, as a punitive measure, expressly excludes the dismissed member from becoming free from any bond resulting from monastic profession. The dismissed member cannot benefit from the dispensation from vows and other obligations derived from profession, due to delicts such as the public abandonment of the Catholic faith, celebrating a canonical marriage or even

²⁵⁸ “Legitima dimissione ipso facto cessant omnia vincula necnon obligationes ex professione monastica promanantia” (*Nuntia*, 16 (1983), 70, c. 85, §1). Cf. R. KASLYN, “The Status of Incardination of the Cleric Dismissed from a Religious Institute,” in *StC*, 37 (2003), 108.

²⁵⁹ See *Nuntia*, 3 (1976), 9-10.

²⁶⁰ See ABBASS, *The Consecrated Life*, 286-287.

²⁶¹ See PUJOL, *La vita religiosa orientale*, 390.

merely attempting to enter into a civil marriage.²⁶² The member of any religious institute who is dismissed *ipso iure* from the religious institute as an apostate, heretic and schismatic, or because he or she celebrated or even only civilly attempted marriage, is still bound by his or her profession.²⁶³

The religious member dismissed *ipso iure* from the religious institute must ask to be freed from a religious bond, which occurs through monastic profession,²⁶⁴ from the competent hierarchical authority to which the religious institute is subject.

The lawfully dismissed religious from the religious institute, who is constituted in a sacred order and who has not been dispensed from it,²⁶⁵ is not able to exercise the sacred order. *CCEO*, canon 494 (cf. *CCEO*, canon 549, §3) highlights:

§1. If a monk who is in perpetual vows and sacred orders has obtained the indult to leave the monastery and return to the world, he cannot exercise sacred orders until he has found a benevolent eparchial bishop to receive him.

§2. The eparchial bishop can receive him either absolutely or on an experimental basis for five years. In the first case, the monk is to be ascribed to the eparchy by the law itself; in the other case, it is after the completion of five years, unless he has been expressly dismissed beforehand.

The *CCEO* does not allow an ordained person, whether deacon or priest, to wander, performing sacred rites wherever he wishes. The cleric must find a benevolent bishop to exercise sacred orders.²⁶⁶ *CCEO*, canon 364 outlines:

The ascription of a cleric to some eparchy does not cease except by valid ascription to another eparchy or by loss of the clerical state.

²⁶² See *Nuntia*, 16 (1983), 70.

²⁶³ See SALACHAS, *La vita consacrata*, 188; see also ABBASS, "Canonical Studies," 508.

²⁶⁴ See *Nuntia*, 16 (1983), 70.

²⁶⁵ See PUJOL, *La vita religiosa orientale*, 390.

²⁶⁶ See ABBASS, "Departure from Religious Institutes," 124.

The religious cleric, after his dismissal from the religious institute, his return to the world and until he has found a bishop who ascribes him to his eparchy or at least receives him on trial, remains acephalous. *CCEO*, canon 357, §1 obliges:

Every cleric must be ascribed as a cleric either to an eparchy, an exarchy, a religious institute or a society of common life in the manner of religious or to an institute or association that has obtained the right to ascribe clerics either from the Apostolic See or, within the territorial boundaries of the Church over which he presides, from the patriarch with the consent of the permanent synod.

Ordained religious members with perpetual vows in a religious institute are ascribed to that institute, therefore, after lawful dismissal and before a dismissed member finds a benevolent bishop, he cannot exercise sacred orders.²⁶⁷

CCEO, canon 494 may hardly be applied in a case where the ordained religious member is *ipso iure dimissus*, as one who publicly rejected the Catholic faith, i.e., one who is an apostate, heretic and schismatic, or because he has celebrated marriage or attempted it even civilly. Consequently, he is impeded from exercising sacred orders²⁶⁸ and with a line of *CCEO*, canon 494, §1, cannot, “exercise sacred orders until he has found a benevolent eparchial bishop to receive him.” No benevolent bishop can accept a religious cleric dismissed due to the delicts of apostasy, heresy or schism, or who attempted marriage and persists obstinately in the said delict.²⁶⁹

2.4.2 — Property

In the case of a religious lawfully dismissed from his or her religious institute, the renunciation of temporal goods made before the monastic profession, or equivalent to

²⁶⁷ See SALACHAS, “La vita monastica e religiosa,” 126.

²⁶⁸ Cf. *CCEO*, c. 763.

²⁶⁹ See SALACHAS, *La vita consacrata*, 189.

orders,²⁷⁰ cannot be canceled because the goods are the property of others.²⁷¹ However, the religious who was lawfully dismissed regains the ability to control, own and administer the goods that he or she may obtain. With regard to the will made in congregations,²⁷² it has no real effect until after the death of the one who made it, so it can be annulled by the dismissed religious.²⁷³ In accordance with *CCEO*, canon 503 (cf. *CCEO*, canon 553):

§1. One who leaves a monastery legitimately or has been dismissed from it legitimately can request nothing from the monastery for any work done in it.

§2. Nevertheless, the institute is to observe equity and charity toward a member who is separated from it.

CCEO, canons 503 and 553 exclude the right to claim any reimbursement for the work completed by the monk or religious in the monastery or in the order or congregation respectively. The member, by virtue of the vow of poverty, renounces the world and totally dedicates him or herself to the acquisition of perfect charity in service to the Kingdom of God.²⁷⁴ The canon speaks of equity and charity and avoids speaking of justice at this time.²⁷⁵

The draft of the Eastern Code states in canon 85, §3:

²⁷⁰ Cf. *CCEO*, cc. 466-468.

²⁷¹ Cf. TORRES, "Forme di separazione dei membri dall'Istituto," 85.

²⁷² See *CCEO*, c. 530.

²⁷³ See PUJOL, *La vita religiosa orientale*, 390-391.

²⁷⁴ See *CCEO*, c. 410.

²⁷⁵ Equity and charity require that, after a member left the religious institute, and until he or she finds a way to earn an honest living, the institute assist him or her as much as possible. In modern society, honest living normally comes from the remuneration that a person gets from a work he or she does. Initial support for the religious institute is to be the first manifestation of equity toward the dismissed member. Evangelical charity requires an institute to assist a departed religious who finds himself in need. Nevertheless, this assistance given to dismissed member must not be excessive to those who remains faithful to his or her vocation. See TORRES, "Forme di separazione dei membri dall'Istituto," 87-88.

Out of charity, the monastery must provide so that, for a certain period of time, by mutual agreement or, in case of disagreement, to be determined by the Hierarch to which the monastery is immediately subject, the monk can live honorably when dismissed.²⁷⁶

A proposition emphasizing justice was made which pointed out that, by virtue of the monastic vow of poverty, the member must carry out his or her work *gratis*. In such a manner, the canon omitted the words *ex caritate*.²⁷⁷

Having been dismissed from the institute, a religious who carried out a specific work as designated by the superior, e.g., as a teacher, writer, painter, cook, gardener, etc.,²⁷⁸ cannot demand any financial compensation for the work performed at the institute, even if it was of another nature. The dismissed religious is the subject of prohibition, but the religious institute can voluntarily come to his or her aid²⁷⁹ if necessary. Both charity and fairness must be maintained so the dismissed religious person can live with dignity for some time, which must not be prolonged, nor perpetual.²⁸⁰

Conclusion

Although dismissal from a religious institute is not a daily event, nor is it a desirable aspect in the life of the Church,²⁸¹ this entire chapter was devoted to this facet of consecrated life. When dismissal occurs, it precipitates grief and trauma for both the individual and his or her religious institute. The dismissal affects the very core of consecrated life, for it is a destruction of the member's consecration to God and the

²⁷⁶ *Nuntia*, 16 (1983), 70.

²⁷⁷ *Ibid*, 71.

²⁷⁸ See PUJOL, *La vita religiosa orientale*, 391.

²⁷⁹ See J. ABBASS, "Assisting Separated Members," in *Practical Comm*, vol. 1, 964.

²⁸⁰ See PUJOL, *La vita religiosa orientale*, 391.

²⁸¹ Cf. GALLEN, "The Proposed Canons on the Consecrated Life Explained: IV," 895.

shattering of the juridic relationship between a religious institute and the individual. Therefore, this could rightly require a therapeutic process of healing.²⁸²

The serious repercussions of being dismissed from a religious institute reveals the profound concern of the Church for those in consecrated life to live their vocations authentically. The norms clearly emphasize the significance of this matter in regard to acts which are isolated, as well as a concern for less serious matters involving mitigated culpability, or issues that cannot be proven in the external forum and do not necessarily signify a cause for dismissal.

The substantial norms for various categories of extra-judicial dismissal are similar for all religious institutes and for all religious members, whether temporarily or perpetually professed. *CCEO*, canons 498 and 551 establish a distinct process of expulsion for the religious member from the religious institute or house, while still remaining incorporated into the religious institute. However, under certain circumstances, expulsion may later lead to dismissal.²⁸³

The *CCEO* and the proper law of the Apostolic See perceive the dismissal of religious members from a religious institute as a complex, difficult, yet sensitive issue. Canon law emphasizes the responsibility of the major superiors to ensure its implementation. It also indicates that bishops must understand their own responsibilities as the shepherds of their flock and as heads of the eparchy entrusted to them.²⁸⁴

²⁸² See THATTIL, “Distinct Motives for the Dismissal of Religious,” 223.

²⁸³ See *ibid.*

²⁸⁴ See THARAKUNNEL, “Sexual Abuse of Minors by Clerics,” 49.

The legislator advises religious institutes to impose the dismissal only in cases that are verifiable juridically. The superior of a monastic confederation or monastery *sui iuris*, and major superiors of orders or congregations, must use discretion in making accurate and appropriate decisions in this matter to promote the improvement and advancement of society and the fair treatment of accused individuals.

Having analyzed the substantive norms that precipitate the extra-judicial dismissal of the religious from the religious institute in the *CCEO*, and in the proper law of the Apostolic See, the next section will address and analyze the substantive norms that regulate a judicial process for the dismissal of a religious from a religious institute.

CHAPTER THREE: SUBSTANTIVE LAW ON JUDICIAL PROCESSES FOR DISMISSAL OF MEMBER FROM RELIGIOUS INSTITUTE

Introduction

CCEO, canon 1414, §2 highlights:

A person is only subject to penalties who has violated a penal law or penal precept, either deliberately or by seriously culpable omission of due diligence or by seriously culpable ignorance of the law or precept.

A person is presumed to be innocent unless it is otherwise proven¹ within the bounds of either a judicial or extra-judicial penal trial. An individual cannot be punished unless an external violation of either a penal law or a penal precept is committed,² either by intentional action or a lack of due care, or by one who committed the act with seriously culpable ignorance of the law or precept.³

Punishment consistently causes harm to an individual. A religious member who commits a delict, which violates either a penal law or a penal precept, is subject to the judicial process and possible dismissal from the religious institute.⁴ If the law warrants and

¹ “Anyone is deemed innocent until the contrary is proven” (*CCEO*, c. 1414, §1).

² The legislator explicitly points the principal of penal legality, “no penalty without a prior penal law.” There must be a violation of penal law or penal precept, which stipulates in its text that anyone who violates this law or precept is subject to a penalty. See F.C. EASTON, “Who Is Subject to Penalties?” in *Practical Comm*, vol. 2, 2537.

³ Cf. G. INGELS, “The Safeguarding Rights when Investigating Allegations of Misconduct of Clergy and Religious,” in *CLSGBI Newsletter*, 137 (2004), 50-51; cf. also MCDONOUGH, “Mandatory Dismissal,” 650.

The Eastern Code not only omits the term *imputabilis*, but also avoids the term *ex dolo vel culpa*. However, the Eastern Code presumes that an action was done deliberately. See PAMPARA, “Characteristic Features of the Penal Law in the Code of Canons of the Eastern Churches,” 290-291.

⁴ The corrective actions of ecclesiastical authorities are categorized into three distinct areas: (1) those that apply in the sacrament of penance; (2) those applied through disciplinary-pastoral domain, which includes exhortation, preaching, and corrections; and (3) laws concerning canonical delicts and penalties. The canonical penal law as outlined in the *CCEO* includes the laws that fall under the third category, which is detailed in title 27 of the *CCEO*. See V. DE PAOLIS, “Coattiva potestà,” in C. CORRAL, V. DE PAOLIS, and G. GHIRLANDA (eds.), *Nuovo dizionario di diritto canonico*, Milan, San Paolo, 1993, 184.

the member is a cleric, he may be subject to removal from the clerical state. In the judicial process, the accused is deprived of the rights and freedoms that belong to him or her by virtue of their legal status within the Church, e.g., a member who is in a sacred order can be limited in the exercise of the orders, or a member can be stripped of privileges or dispensations granted for the religious institute. It is of great importance to be mindful of the fact that a law which establishes penalties is subject to strict interpretation.⁵ The competent ecclesiastical authority does not enforce its punitive power or impose punishments without careful consideration. In view of this forbearance, the competent ecclesiastical authority endeavours to restore a person to his or her vocation.

Revised canon 1402, §1 of *CCEO* states:

The hierarch must initiate a procedure to impose penalties when reprimand, entreaty, or rebuke cannot sufficiently restore justice, lead the offender to penance and have him or her self-correct, repair the scandal and damage.

In the Eastern Catholic Churches, the purpose of punishing the offender is primarily to correct the perpetrator:⁶ *CCEO*, canon 1401 outlines:

Since God employs every means to bring back the erring sheep, those who have received from Him the power to loose and to bind are to apply suitable medicine to the sickness of those who have committed delicts, reproving, imploring, and rebuking them with the greatest patience and teaching. Indeed, they are even to impose penalties in order to heal the wounds caused by the delict, so that those who commit delicts are not driven to the depth of despair nor are restraints relaxed unto a dissoluteness of life and contempt of the law.

The competent ecclesiastical authority continually searches for solutions to problems which arise; other means of support are also enlisted, including the provision of pastoral

⁵ See *CCEO*, c. 1500.

⁶ See PERUMAYAN, “Revised Penal Sanctions,” 14.

A characteristic feature of Eastern thinking is its understanding of delicts as diseases and penalties as medicine. See PAMPARA, “Characteristic Features of the Penal Law in the Code of Canons of the Eastern Churches,” 284.

care⁷ rather than applying penal sanctions. However, the competent ecclesiastical authority must not fail to bear in mind the necessity of ensuring perseverance in fulfilling the duties of the faithful toward God and the Church. Therefore, if the scandal and damage cannot be repaired by reprimand, entreaty or rebuke, which will serve to promote compliance with ecclesiastical discipline, the competent ecclesiastical authority recognizes its right to resort to coercive force in order to administer natural justice.⁸ In its penal sanctions, the legislator makes every effort to maintain a balance with regard to punishments that are administered. Penalties should not be so severe that the offender is driven to despair. Penalties should be imposed consistently to prevent the offender from becoming entrenched in his or her criminal behaviour, consequently, developing a disrespect for the law and for the Church.⁹ The application of punishments is the responsibility of the competent ecclesial authority who initiates the trial, which can ultimately result in the imposition or declaration of a punishment if no other alternative has been effective.¹⁰

This chapter examines the judicial process for the dismissal of a member from the religious institute. The uniqueness of the Eastern Code is signified by the fact that any case of dismissal of a religious member from a religious institute may be treated by a judicial process. If the case is considered by an extra-judicial process of dismissal, which is the sole

⁷ The Eastern Code envisages that before competent ecclesiastical authorities start penal sanctions, their role is of good shepherd (cf. Luke 15:1-7) who brings lost sheep back home. See DOMINGO, "Penal Law in the Roman Catholic Church," 167.

⁸ See V. DE PAOLIS, "Penal Sanctions, Penal Remedies and Penances," in M.P. DUGAN, *The Penal Process and the Protection of Rights in Canon Law: Proceedings Held at the Pontifical University of the Holy Cross, Rome, March 25-26, 2004*, Montreal, Librairie Wilson & Lafleur inc., 2005, 146-152.

⁹ See F.C. EASTON, "Penal Law in the Church," in *Practical Comm*, vol. 2, 2519.

¹⁰ An ecclesiastical delict or the transgression of a canon law does not only harm its own perpetrator, but also and above all that it affects the whole Mystical Body of the Church. See H. ALWAN, "Les sanctions pénales," in A. AL-AHMAR, et al. (eds.), *Acta symposii internationalis circa Codicem canonum Ecclesiarum orientalium, Kaslik, 24-29 aprilis 1995*, Kaslik, Université Saint-Esprit de Kaslik, 1996, 376.

method allowed by canon law which a major superior is to employ, a religious member can request that the case be handled judicially.¹¹ The third chapter consists of three divisions, namely: Judicial Processes in a Religious Institute, Officers in the Tribunal in Religious Institute and Competent Tribunals for Dismissal of Religious from the Religious Institute.

3.1 — Judicial Processes in a Religious Institute

A member of a religious institute who violated religious profession or committed a delict which entails a dismissal is to be dismissed under the extra-judicial process (common in religious institutes),¹² which is highlighted in the *CCEO*, Title XII: ‘Monks and Other Religious as well as Members of Other Institutes of Consecrated Life.’ The Eastern Code also reserves for, major superiors who possess and exercise judicial power granted to them by ecclesiastical law, the possibility of conducting a judicial process while observing the norms of penal law and processes, which may conclude in a dismissal from the religious institute.

CCEO, canon 1069, §1 states:

Controversies between physical or juridic persons of the same institute of consecrated life in which superiors are endowed with the power of governance, except secular institutes, are to be decided before the judge or tribunal determined in the typicon or statutes of the institute.

¹¹ The Church as a spiritual community is committed to justice and the protection of the rights of the faithful. Canon law enshrines this principle, most notably in *CCEO*, canon 24, §1: “The Christian faithful can legitimately vindicate and defend the rights that they have in the Church in the competent ecclesiastical forum according to the norm of law.”

Judicial review of administrative decrees serves to protect against arbitrariness, error, abuse of power, or violation of rights. The authority to make the decisions which is given to an individual must be exercised within the bounds of law and charity. Judicial review serves both to protect individuals and to maintain the integrity of ecclesiastical governance. See D. SALACHAS, Commentary on c. 24, in PINTO, *Commento CCEO*, 33.

¹² See PUJOL, *La vita religiosa orientale*, 387.

Superiors of institutes of consecrated life are endowed with personal governing power not territorial as an eparchial bishop. Their subjects are those who are ascribed to their religious institute (e.g., *CCEO*, canon 486 – persons who live day and night in the monastery). *CCEO*, canon 1069, §1 outlines a sound principle: judges within institutes of consecrated life are permitted to exercise jurisdiction solely over their subjects, and they become incompetent if the case only involves one of their subjects, the other subject is outside of the superior's religious institute.¹³

The typicon of a monastery, or the statutes of an order or congregation must determine the appropriate tribunal¹⁴ that should decide controversies, including any contentious trial between physical or juridic persons of the same institute of consecrated life in the first instance. In religious institutes wherein the superiors are endowed with power of governance,¹⁵ any controversies, including a contentious trial between physical or juridic persons of the same institute of consecrated life, may be heard before the judge of the same religious institute.

The 1982 Schema *canonum de tutela iurium seu de processibus* states:

No particular rule is proposed in the schema concerning the internal tribunals of monasteries and other institutes of consecrated life (can. 14). The organization of justice within the boundary space (walls) of these institutes is entrusted to typicons or statutes approved by legitimate authority. However, if the parties do not belong to the same institute of consecrated life or if one of them is an eparchial cleric or a layperson, it is proposed, in deference to can. 51 §3 of the Apostolic Letter “*Sollicitudinem Nostram*,” that these cases, without distinction, be all dealt with in the first instance by the local Hierarchy. The distinction between clerical and non-clerical institutes of consecrated life is, in this matter, definitive. For it is obvious that those who enjoy only dominative, that is, non-jurisdictional, power, such as Superiors in monasteries or other non-clerical institutes of consecrated life, cannot be entrusted to act

¹³ See W.L. DANIEL, “Competence in Causes Involving Institutes and Members of Consecrated Life,” in *Practical Comm*, vol. 2, 2022.

¹⁴ See J. ABBASS, “Trials in General: A Comparative Study of the Eastern and Latin Codes,” in *J*, 55 (1995), 862-863.

¹⁵ See A. THAZHATH, “Administration of Justice in the Patriarchal Churches,” in CONGREGATION FOR THE EASTERN CHURCHES, *Ius Ecclesiarum – vehiculum caritatis*, Libreria editrice Vaticana, 2004, 479.

judicially. Judicial cases between those who are ascribed in the Higher Institutes are to be handled in the tribunals common to the rest of the Christian faithful.¹⁶

Canon 14 of 1982 Schema outlines:

1. Controversies, in the first and subsequent instances, between physical or juridical persons of the same Monastery *sui iuris* or of the same Institute of consecrated life are to be decided by the Superior or by a tribunal as prescribed in the typicons or statutes approved by legitimate Authority.

2. If a controversy arises between physical or juridical persons of different Monasteries or Institutes of consecrated life or between the same persons and eparchial or lay clerics, the judge of first instance is the local Hierarchy; in appeals the procedure is according to the ordinary norm of law.¹⁷

In religious institutes where the superiors are not endowed with the power of governance, i.e., they have only dominative power, the first instance tribunal competent by law is the eparchial tribunal.¹⁸

¹⁶ “De tribunalibus internis monasteriorum aliorumque Institutum vitae consecratae nulla particularis regula in schemate proponitur (can. 14). Ordinatio iustitiae intra septa horum Institutum administrandae typicis vel statutis a legitima Auctoritate adprobatis committitur. Si vero partes non pertinent ad idem Institutum vitae consecratae vel una ex ipsis clericus eparchialis vel laicus sit, proponitur, in demgationem can. 51 §3 Litt. Ap. «Sollicitudinem Nostram», ut hae causae, nulla facta distinctione, omnes tractentur in prima instantia a Hierarcha loci. Distinctio vero inter clericalia et non clericalia Instituta vitae consecratae, hac in re, dehnitiva est. Obvium enim est, iis qui nonnisi potestate dominativa, scilicet non iurisdictionali, gaudent, ut sunt Superiores in monasteriis vel in ceteris Institutis vitae consecratae non clericalibus, committi non posse ut iudicialiter agant. Iudiciales causae inter eos qui hig Institutis adscripti sunt tractandae sunt apud tribunalia ceteris ehristifidelibus communia” (*Nuntia*, 14 (1982), 6).

¹⁷ 1. Controversiae, in prima et ulterioribus instantiis, inter personas physicas vel iuridicas eiusdem Monasterii sui iuris vel eiusdem Instituti vitae consecratae definiendae sunt apud Superiorem vel tribunal utpote in typicis vel statutis a legitima Auctoritate adprobatis praescribitur.

2. Si controversia enascatur inter personas physicas vel iuridicas diversorum Monasteriorum vel Institutum vitae consecrate aut inter easdem personas et clericos eparchiales vel laicos iudex primae instantiae est Hierarcha loci; in appellationibus proceditur ad ordinariam iuris normam.

(*Nuntia*, 14 (1982), 23).

¹⁸ See *CCEO*, cc. 1073-1083.

Where a competent superior is endowed with the power of governance, he may constitute a tribunal in the canonical sense, that is, appointing the persons required for the judicial adjudication of a case (judge or judges, notary, and, where applicable, promoter of justice). In such cases, *tribunal* does not denote a physical structure (cf. *CCEO*, cc. 1066, 1067, §3), but rather the lawful constitution of judicial authority (cf. *CCEO*, cc. 1062, §2, 1112). Where, however, the superior lacks such power, recourse must be made to the tribunal competent by law, typically the eparchial tribunal of first instance, which ordinarily exists as an established institutional structure with designated personnel to conduct the judicial process.

3.1.1 — Request for a Judicial Trial

David-Maria Jaeger provides the following observation after his deliberation that the accused member may have a chance to choose a judicial trial:

Not only is the dismissal of any religious, according to *CIC*, not imposed by collegial judicial sentence, but by administrative decree; in addition, there is no guarantee (and, in the majority of cases, there is not even any probability) that those who are responsible for rendering a decision – the superiors and the councillors – are experts, holding a doctorate or at least a licentiate in canon law. Instead, it would be the actual judges who compose the collegial tribunal.¹⁹

Jaeger emphasizes that a judge is more qualified to render a proper decision in a case where the resulting decision bears considerable significance in the imminent fate of a person. Ecclesiastical law outlines the role and duty of a judge (who bears full knowledge of the existing law), in order to judiciously take into account the facts of the case, to determine their objective merit or certitude, and, subsequently, to apply the law to the facts of the case.²⁰ In the judicial process, justice and human rights (in reference to an individual who chooses a religious state in life) is better safeguarded for the person who accused of committing a delict.²¹ Jaeger presupposes that superiors and their councillors, who render decisions of extra-judicial dismissal, are not always competent in ecclesiastical law. Canon law does not require the major superior (who bears judicial power while legitimately holding this office) to have a degree in canon law; therefore, such major superiors are not

¹⁹ “Non solo la dimissione dei religiosi, secondo il *CIC*, non viene inflitta per sentenza giudiziaria collegiale, ma per decreto amministrativo, ma non c’è nessuna garanzia (e, nella maggioranza dei casi, non c’è nemmeno alcuna probabilità) che le persone che prendono la decisione, i superiori e i consiglieri, siano periti, dottori o almeno licenziati, in diritto canonico, come invece lo sarebbero i veri giudici che avrebbero composto il tribunale collegiale” (D.-M. A. JAEGER, “Alcuni appunti sui religiosi nel *Codex canonum Ecclesiarum orientalium*,” in K. BHARANIKULANGARA (ed.), *Il diritto canonico orientale nell’ordinamento ecclesiale*, Studi giuridici, no. 34, Vatican City, Libreria editrice Vaticana, 1995, footnote 56, 190).

²⁰ Cf. S. PIKUS, “Sędzia kościelny w świetle zadań i uprawnień procesowych [The Ecclesiastical Judge in the Light of His Duties and Procedural Rights],” in *Prawo Kanoniczne*, vol. 45, nos. 3-4 (2002), 274.

²¹ See JAEGER, “Alcuni appunti sui religiosi nel *Codex canonum Ecclesiarum orientalium*,” 190.

always competent in their knowledge of the law, and may possibly not appropriately apply the law to the facts.

According to *CCEO*, canon 501, §2, a member who is dismissed by a decree (given consideration in *CCEO*, canons 497-500, 551-553), is granted the faculty to make a, “request that the case be handled judicially,” in order to provide proof of his innocence. This is due to the canons pertaining to penal judicial trials, *CCEO*, canons 1471-1482.²² According to *CCEO*, canon 501, §2 such a judicial process is only foreseen in cases involving the dismissal of perpetually professed religious. This is unique in the *CCEO*, i.e., to be able to request a judicial trial for a dismissed member.²³

With regard to members of religious institutes, the legislator allows to competent superiors to apply a judicial process to establish whether the member is guilty of the alleged delicts or offences or not.²⁴ However, *CCEO*, canon 500, obliges major superiors in the first instance to issue a decree of dismissal which is characterized as an administrative act.²⁵

²² See PUJOL, *La vita religiosa orientale*, 390.

²³ See HOLLAND, “Canonical Dismissal,” 78.

²⁴ “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 [The delict in question includes every external offense against the sixth commandment of the Decalogue committed by a cleric with a minor (cf. canon 1398 § 1, 1^o CIC; art. 6, 1^o SST)] can also entail dismissal from a religious institute. The following should be kept in mind: a) such dismissal is not a penalty” (*Vademecum*, no. 8, in *AAS*, 114 (2022), 922, RENKEN, *Substantive Law*, 626).

The delict against chastity with a minor was discussed in 2.2.1.3 — Offences Against Dignity. Therefore, it is necessary to clearly distinguish between a penal process and the use of administrative power of a competent superior to dismiss a guilty member. See SÁNCHEZ-GIRÓN RENEDO, “La expulsión de un instituto religioso,” 711.

²⁵ See ABBASS, “Recourse against Dismissal Decree,” 960.

3.1.2 — Competent Superior for Judicial Processes

Power of governance²⁶ granted by canon law to certain religious superiors is a sign of the autonomy of religious institutes. Namely, the superior who possesses the power of governance in the administration of its own religious institutes, for any need, will not require the intervention of the ecclesiastical hierarchy to which the religious institute is subject.²⁷ According to *CCEO*, canon 980, §1, power of governance is exercised for the external forum or in the internal forum, whether sacramental or non-sacramental.

CCEO, canon 979 states:

§1. Those who have been constituted in a sacred order are qualified, in accord with the norm of law, for the power of governance, which exists in the Church by divine institution.

§2. Other members of the Christian faithful can cooperate in the exercise of the power of governance in accord with the norm of law.

CCEO, canon 985, §1 distinguishes different functions of ecclesiastical power, which are legislative, executive and judicial. Major superiors in institutes of consecrated life, who are endowed with ordinary power of governance, are hierarchs.²⁸

A proposition has been put forth stating that the rules of power of governance should also be applied to the exercise of this power by male and female religious superiors²⁹ who

²⁶ Power of governance exists in the Church by Divine institution. See *CCEO*, c. 979, §1.

Power of governance derives from the will of its divine Founder, Jesus Christ. This power is intimately united with the other two powers, namely that of teaching and that of sanctifying. Together they constitute a single sacred power, differentiated by the object of the functions exercised by the respective powers: teaching, sanctifying, and governing. See P.G. MARCUZZI, “Considerazioni sulla natura della potestà degli istituti di vita consacrata,” in *Salesianum*, 46 (1984), 776-777.

²⁷ See PUJOL, *La vita religiosa orientale*, 267-268.

²⁸ See *CCEO*, c. 984, §3.

²⁹ A superior brother-monk or superior nun; a superior of a clerical congregation of eparchial right; a superior, whether brother or nun, of an order or congregation.

The 1980 Schema, c. 93, §1 granted to the clerical eparchial congregations the jurisdiction that: “Superiors in orders and clerical congregations, in addition to dominative power, also enjoy the ecclesiastical power of governance for both external and internal forums, according to the legally approved statutes or in the common law granted to them” (*Nuntia*, 11 (1980), 39).

have *dominative* power.³⁰ The *habilitas*, referred to in canon 979 is presented as a matter of merely ecclesiastical law; therefore, it is subject to exception.³¹ Moreover, the same canon states that other members of the Christian faithful are able to cooperate in the exercise of power of governance in accordance with the norm of law.

The distinction between possessing the power of governance and merely sharing in its exercise is new, and it is not at all clear what it means to cooperate in the exercise of a power that a person cannot hold. In the case of a judicial sentence in which the two clerical judges are divided, the lay judge casts the decisive and binding vote.³²

According to *CCEO*, canon 1087, §2, both clerics and other Christian faithful may exercise judicial power in collegial tribunals.

3.1.2.1 — Judicial Power Exercised in a Monastery *sui iuris*

CCEO, canon 441, §2 establishes:

Superiors in monasteries *sui iuris* have the power of governance insofar as it is expressly granted to them by law or by the authority to which they are subject, with due regard for can. 979.

A superior of a monastery *sui iuris* of eparchial, patriarchal or pontifical right, who is in sacred order, is able to exercise the power of governance as far as it is expressly granted to him by canon law, or by the authority³³ to which the monastery *sui iuris* is

However, the Schema of the year 1983, canon 93, on the basis of an unconvincing motivation, excluded the clerical eparchial congregations of the following jurisdiction: “The superiors of institutes *iuris eparchialis*, even if they are *clericales*, must not enjoy *ipso iure* the *potestas regiminis*” (*Nuntia*, 16 (1983), 77).

This exclusion is confirmed in the current legislation.

³⁰ See V.J. POSPISHIL, *Eastern Catholic Church Law: According to the Code of Canons of the Eastern Churches*, Brooklyn, NY, Saint Maron Publications, 1993, 570.

³¹ See F.J. URRUTIA, *De normis generalibus. Adnotationes in Codicem: Liber I*, Rome, Pontificia Universitas Gregoriana, 1983, 89.

³² R.A. HILL, Commentary on c. 129, in J.A. CORIDEN, T.J. GREEN, and D.E. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary*, New York/Mahwah, NJ, Paulist Press, 1985, 93.

³³ The norm of the typicon will define that while a superior of monastery *sui iuris* is in a sacred order, he may exercise the judicial power.

subject.³⁴ *CCEO*, canon 981, §1 states: “[t]he ordinary power of governance is that which is joined to a certain office by the law itself.” Therefore, canon law recognizes that the superior of a monastery *sui iuris* may be granted the power of governance,³⁵ as long as he is in the sacred order and exercises an ecclesiastical office.³⁶

Not all superiors and monastic synaxes, both of the monastery *sui iuris* and the dependent monastery, have the same power of governance.³⁷ The power of governance, which a superior of a monastery *sui iuris* holds over his subjects, is not unlimited, and the superior is bound to use the power of governance in conformity with the typicon and canon law.³⁸

The superior of a monastery *sui iuris* to whom, by ecclesiastical authority, is granted power of governance, especially judicial power,³⁹ has the authority to establish a judicial tribunal⁴⁰ in order to adjudicate his own subjects in the first instance in a penal case,⁴¹ in accordance with *CCEO*, canons 1471-1482. When the case is adjudicated in the first

³⁴ See CHIRAMEL, *The Code of Canons of the Eastern Churches*, 173; see also ABBASS, *The Consecrated Life*, 91-92.

³⁵ See J.M. HUELS, “Legislative, Executive and Judicial Power,” in *Practical Comm*, vol. 2, 1846.

³⁶ See J. ABBASS, “Internal Authority in Monasteries,” in *Practical Comm*, vol. 1, 887.

³⁷ See KOCHUPURACKAL, *Religious Authority and Power*, 142-143.

³⁸ See PUJOL, *La vita religiosa orientale*, 170.

³⁹ See P.V. PINTO, *I processi nel Codice di diritto canonico: commento sistematico al Lib. VII*, Vatican City, Libreria editrice Vaticana - Pontificia Università Urbaniana, 1993, 110.

⁴⁰ Here, *tribunal* refers not to a physical body, but to the competent authority constituted according to law, including the judge or judges, the notary, and, where applicable, the promoter of justice.

⁴¹ The superior who does not hold judicial power cannot establish a judicial tribunal to begin a contentious trial or a penal judicial trial against a member who is accused of committing a delict or offence against monastic profession. Dismissal is carried out in an extra-judicial trial, thus exercising executive power. See ROSINSKI, “Mercy and Due Process in Religious Institutes,” 599.

instance and the accused member is found guilty, he is able to introduce an appeal to the judge who rendered the sentence, following *CCEO*, canon 1311.⁴²

The aforementioned information applies in the same manner within other religious institutes, such as monasteries *sui iuris*, monastic confederations, orders or congregations where major superiors are not in sacred order, or clerical congregations of eparchial right, if the ecclesiastical authority to which the religious institutes is subject has granted judicial power to them.

3.1.2.2 — Judicial Power Exercised in a Clerical Religious Institute

CCEO, canon 511, §1 establishes for orders and congregations:

The superiors and synaxes in orders and congregations have that power that is determined by common law and the statutes.

All religious superiors who have been entrusted with a particular office, and the synaxes in orders and congregations who have been entrusted with the appropriate power,⁴³ i.e., *dominative* power, are to fulfill their duties to the degree that is determined by canon law and by their own statutes.⁴⁴ Moreover, the statutes will determine which superiors and synaxes in orders and congregations possess the power of governance.

CCEO, canon 511, §2 recognises:

In clerical orders and congregations of pontifical or patriarchal right, however, superiors and synaxes have, in addition, the power of governance for the external and internal forums in accord with the norm of the statutes.

⁴² An appeal must be introduced within the peremptory time of fifteen useful days from notification of the publication of the sentence. In accordance with *CCEO*, canon 1124, §2, the judge may extend the time limit for lodging an appeal to thirty useful days, following *CCEO*, canon 501, §2, which extended the time limit for lodging recourse against a decree to thirty useful days.

⁴³ See E. McDONOUGH, "Authority in Institutes of Consecrated Life," in *RfR*, 55 (1996), 206.

⁴⁴ See PUJOL, *La vita religiosa orientale*, 267.

In clerical orders and clerical congregations of pontifical or patriarchal right, superiors and synaxes are endowed with power of governance a *iure communi*,⁴⁵ as the canon explicitly refers to *CCEO*, canon 979.⁴⁶ The statutes of the clerical orders and clerical congregations of pontifical or patriarchal right, in accordance to canon law,⁴⁷ must establish the extent of this power, and the type of power which is affiliated and applies to the superior general, to the general synaxis⁴⁸ or general congregation, to the provincial superior and to the local superiors, respectively.⁴⁹ The statutes can limit this jurisdiction in its exercise of power, but cannot suppress it in any superiors who are lawfully elected or appointed.⁵⁰

The power to dismiss a guilty member from a clerical order or clerical congregation of pontifical or patriarchal right applies solely to the superior general.⁵¹ While he lawfully holds this office and is in a sacred order,⁵² he *ipso iure* bears judicial power. It is the responsibility, within the competence of the superior general, to conduct the judicial

⁴⁵ See ABBASS, “Trials in General,” 863; see also DANIEL, “Competence in Causes Involving Institutes and Members of Consecrated Life,” 2022.

⁴⁶ Cf. E. McDONOUGH, “The *Potestas* of Religious Superiors: Background for Canon 596,” in *R/R*, 54 (1995), 939.

⁴⁷ See J. ABBASS, “Internal Authority in Orders and Congregations,” in *Practical Comm*, vol. 1, 975-976.

⁴⁸ “A more fundamental balance for that authority, however, is the occasionally exercised but fundamentally substantive authority of the general chapter” (E. McDONOUGH, “Religious Superiors and Government,” in *The Way Supplement*, 50 (1984), 66).

⁴⁹ Superiors in religious institutes “have authority within the limits of their office. [...] superiors exercise their office at the local or provincial levels” (F.G. MORRISEY, “The Relationships between Superiors in a Religious Institute,” in *Informationes SCRIS*, 23 (1997), 131).

⁵⁰ See PUJOL, *La vita religiosa orientale*, 268.

⁵¹ Cf. *CCEO*, c. 553.

⁵² Friday, May 20, 2022 with a Rescript of May 18, 2022, Pope Francis derogated from canon *CIC*, canon 588, §2. “A non-clerical member of an institute of consecrated life or a clerical apostolic society of apostolic life of pontifical right shall be elected Supreme Moderator or Major Superior in the manner prescribed by proper law, with confirmation required – by written license – from the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life” (CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETY OF APOSTOLIC LIFE, Rescript, *Rescriptum Ex Audientia SS.MI*, 18 May 2022, no. 3, in *AAS*, 114 (2022), 789, English translation <https://www.ofmconv.net/en/i-fratelli-laici-possono-diventare-superiori-maggiori/> (12 November 2025)).

process in religious institutes, in accordance with norms of penal law and processes which were examined in 3.1.2.1 regarding judicial power exercised in a monastery *sui iuris*.

3.1.3 — Penal Judicial Trial for *graviora delicta*

Universal law obliges the competent ecclesiastical authority to act consistently, especially with regard to receiving a notice of a substantiated claim of a *gravius delictum* reserved to the DDF, “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.”⁵³ The law mandates that a report should be promptly⁵⁴ prepared, outlining the details of certain delicts and forwarded to the competent ecclesiastical authority;⁵⁵ the law requires the establishment of a stable system for the submission of a report.⁵⁶ *VELM 2023*, art. 3 identifies:

§1. Except for when a cleric learns of information during the exercise of ministry in the internal forum, whenever a cleric or a member of an Institute of Consecrated Life or of a Society of Apostolic Life learns, or has well-founded motives to believe, that one of the acts referred to in art. 1 has been committed, that person is obliged to report it promptly to the local Ordinary where the events are said to have occurred, or to another Ordinary among those referred to in canons 134 CIC and 984 CCEO, except for what is established by §3 of the present article.

§2. Any person, in particular the lay faithful who serve in offices or exercise ministries in the Church, can submit a report concerning one of the acts referred to in art. 1, using the methods referred to in the preceding article, or by any other appropriate means.

⁵³ *Vademecum*, no. 9, in *AAS*, 114 (2022), 922, RENKEN, *Substantive Law*, 626-627; cf. *CCEO*, c. 1446, §4.

⁵⁴ Cf. *VELM 2023*, art. 11, §2, in *AAS*, 115 (2023), 400, RENKEN, *Substantive Law*, 665.

⁵⁵ See S. WOYWOOD, “Criminal Trials,” in *Homiletic and Pastoral Review*, 33 (1933), 833.

⁵⁶ See J.A. RENKEN, “*Vos estis lux mundi*: The Evolution of the Church’s Response to Sexual Abuse and Its Cover-Up after the Vatican Summit,” in *StC*, 53 (2019), 657.

The norm deals with a reference for the reporting of a *gravius delictum*, mentioned at the same *VELM 2023*, art. 1, §1, a), i.e., the delicts against the sixth commandment of the Decalogue and child pornography.

VELM determines the conditions whereby any person, including a cleric, a member of a religious institute, a lay faithful person serving in offices or exercising ministries in the Church,⁵⁷ who has received a notification of, or has reasons to believe rumours of this delict, has both a civil and a moral obligation to provide a report to the competent ecclesiastical authority.⁵⁸ A person who receives such a notification must promptly report it to the ecclesiastical authority, whether to the local hierarch⁵⁹ of the place where the event occurred, or to another hierarch,⁶⁰ such as the major superior,⁶¹ who must act according to the protocol of his own religious institute in the safeguarding of minors from sexual abuse.⁶²

2021 Normae, art. 10, §1 states:

Whenever the Ordinary or Hierarch receives a report of a more grave delict, which has at least the semblance of truth, and after having completed the preliminary investigation according to the norm of can. 1717 *CIC* and can. 1468 *CCEO*, he is to communicate the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch how to proceed further.

⁵⁷ See *ibid*, 646.

⁵⁸ For instance, parents of a child reports/complains to a hierarch/major superior that their child was sexually abused while attending a summer camp for children. This camp is provided by a religious institute, and a religious member, referred to as *Father X*, served as the director of the camp and stayed overnight inside the children's dormitory.

⁵⁹ Cf. *CCEO*, c. 984, §2. A major superior who is not the hierarch, if he or she receives such information, must inform the appropriate local hierarch. See ROSINSKI, "Mercy and Due Process in Religious Institutes," 597.

⁶⁰ Cf. *CCEO*, c. 984, §§1 and 3.

⁶¹ Cf. *CCEO*, c. 418, §1.

⁶² See D.L. BARR, "Seminar: Obligation of the Tribunal to Report Child Abuse," in *CLSA Proceedings*, 73 (2011), 70.

The ecclesiastical law recognizes the right of minors to be protected and respected for their innocence; it is legitimate to expect that a minor who is completely dependent on the care of adults is treated with dignity.⁶³ An effective plan is to establish and develop a child abuse prevention strategy,⁶⁴ which must be formulated and implemented with commitment, responsibility and accountability.⁶⁵ When the major superior, who is both the hierarch and the competent superior of the accused religious, receives information regarding a probable *gravius delictum* committed by his member, following the norms of law, he must carry out a preliminary investigation in accordance with *CCEO*, canon 1468⁶⁶ or the DDF itself,⁶⁷ unless it is rendered as entirely needless.⁶⁸

During the preliminary investigation, the hierarch directly, or through another suitable person,⁶⁹ must inquire about the facts and circumstances as to whether his member

⁶³ “One of the important factors that lead towards vulnerability is the relationship of the victim with the offender. In most cases, the offender is known to the victim which makes a child more vulnerable and suppresses from reporting the heinous crime of child sexual abuse” (D.P. VARGHESE and S. JOHN, “The Protection of Children from Sexual Offences Act, 2012: Strong Provisions, Weak Implementation?” in *Ius*, vol. 12, no. 1 (June 2021), 122).

⁶⁴ “There is no uniform, generally applicable definition of prevention. [...] With regard to sexual violence, prevention means creating healthy and safe circumstances and behaviors so as to prevent sexual crimes before they can even take place. [...] a reduction of risk factors and an increase in protective factors with the goal to prevent sexual violence from happening in the first place. [...] (1) defining the problem, (2) identifying risk factors and protective factors, (3) development and testing of prevention strategies, and (4) assuring widespread adoption of these strategies” (H. ZOLLNER, K.A. FUCHS, and J.M. FEGERT, “Prevention of Sexual Abuse: Improved Information Is Crucial,” in *Child and Adolescent Psychiatry and Mental Health* 2014 8:5).

⁶⁵ See SCICLUNA, “The Impact of Pedophilia,” 260-265.

⁶⁶ See RENKEN, “*Normae de gravioribus delictis*: 2010 Revised Version,” 96.

⁶⁷ “It can happen that the *notitia de delicto* comes directly to the DDF and not through the Ordinary or Hierarch. In that case, the DDF can ask the latter to carry out the investigations or, in accordance with art. 10 §3 SST, can carry them out itself” (*Vademecum*, no. 24, in *AAS*, 114 (2022), 925, RENKEN, *Substantive Law*, 629).

⁶⁸ See J.A. RENKEN, “Penal Law and Financial Malfeasance,” in *StC*, 42 (2008), 25.

⁶⁹ Scicluna outlined, “the investigator (the one carrying out the preliminary investigation of canon 1717 [*CCEO*, c. 1468]) must have some knowledge of the canonical procedure of the penal process and an awareness of Catholic teaching” (BARTCHAK, “Child Pornography,” 221-222).

If hierarch appoints an investigator some person who is not familiar with ecclesiastical law or doctrine of the Church, Scicluna advises that such investigator is to be assisted by canonical advisor. If a judicial penal

committed a delict. Before initiating the process of removal from the clerical state of a member who is in sacred order, and subsequently, the dismissal of a member from a religious institute, the major superior must obtain knowledge, which at least seems true, regarding the canonical delict in question, even though the proof of such a fact in a judicial trial may be difficult and may not be successful. The assumption must be maintained that proof of guilt will be found.⁷⁰

After the preliminary investigation is completed, the major superior must communicate the result, together with his *votum*, to the DDF,⁷¹ who thereupon decides which process to employ: “[d]elicts reserved to this Supreme Tribunal are to be tried in a judicial process or by means of an extra-judicial decree.”⁷² The Supreme Tribunal of the DDF determines whether to use a judicial process or to proceed by means of an extra-judicial decree.⁷³

process follows, this canonical advisor becomes incapable of certain functions in the penal process (cf. *CCEO*, cc. 1231, §2, 1°; 1468, §3). See *ibid*, 222.

⁷⁰ See J.A. ALESANDRO, “A Study of Canon Law: Dismissal from the Clerical State in Case of Sexual Misconduct,” in *The Catholic Lawyer*, vol. 36, no. 3 (1996), 273.

⁷¹ See *2021 Normae*, art. 10, §1, in *AAS*, 114 (2022), 117, RENKEN, *Substantive Law*, 617; see also PERUMAYAN, “From Reservation to Vigilance,” 114.

⁷² *2021 Normae*, art. 9, §3, in *AAS*, 114 (2022), 117, RENKEN, *Substantive Law*, 617.

⁷³ The *Normae* as to whether to use judicial or extra-judicial process generated development and progress. *2001 Normae*, art. 17 stated: “[t]he more grave delicts reserved to the Congregation for the Doctrine of the Faith may only be tried in a judicial process” (WOESTMAN, *Ecclesiastical Sanctions and the Penal Process*, 307).

2010 Normae, art. 21, §2, 1° stated: “However, the Congregation for the Doctrine of the Faith may decide, in individual cases, *ex officio* or when requested by the Ordinary or Hierarchy, to proceed by extrajudicial decree as provided in can. 1720 of the Code of Canon Law and can. 1486 of the Code of Canons of the Eastern Churches. However, perpetual expiatory penalties may only be imposed by mandate of the Congregation for the Doctrine of the Faith” (*2010 Normae*, art. 21, §2, 1°, in *AAS*, 102 (2010), 428, RENKEN, *The Penal Law*, 471).

2010 Normae retained the judicial penal process as the preference of the CDF to the administrative penal process. See P.O. AKPOGHIRAN, *Delicta graviora manual. A Commentary on Articles 21-31 of the Normae de gravioribus delictis Congregationi pro doctrina fidei reservatis*, 2nd ed., vol. 3, New Orleans, LA, Guadalupe Book Publishers, 2020, 2.

The tribunal of the DDF may determine a judicial process regarding the removal from the clerical state of a religious cleric. The case may be adjudicated by the DDF itself, the tribunal of the religious institute to which the accused religious member belongs⁷⁴ or another tribunal.⁷⁵ If the case is adjudicated by another tribunal, the DDF transmits special norms, which must be executed in their entirety.⁷⁶ A member of a religious institute who is found to be guilty of a *gravius delictum* reserved to the DDF, if the case warrants, is dismissed from the religious institute according to the norms of the *CCEO* and the particular law of the same institute.⁷⁷

In *2021 Normae*, the legislator added an equal position as to whether judicial penal process or an extra-judicial decree was to be employed. However, “[w]hensoever the Congregation for the Doctrine of the Faith has decided that an extrajudicial process should be initiated, can. 1720 *CIC* or can. 1486 *CCEO* is to be applied” (*2021 Normae*, art. 19, §1, in *AAS*, 114 (2022), 120, RENKEN, *Substantive Law*, 619).

If the DDF decides to proceed with the administrative penal process, all the formalities called for in *Vademecum* in nos. 91-141 will be included in its responsibility, without prejudice to its right to request, if necessary, the cooperation of lower instances. See *Vademecum*, no. 129, in *AAS*, 114 (2022), 946, RENKEN, *Substantive Law*, 648.

⁷⁴ For example, the tribunal of a major superior who is a hierarch.

Tribunal denotes the juridic body constituted in law, comprising the judge or judges, the notary, and, where applicable, the promoter of justice, rather than a physical structure.

⁷⁵ The DDF may entrust that the case be adjudicated before the tribunal of the local hierarch who conducted the preliminary investigation, that is, the tribunal of the place where the event has occurred. See T. WYTRWAŁ, “Kościelny *modus procedendi* w przypadkach pedofilii [Church’s *modus procedendi* in Cases of Pedophilia],” in *Prawo kanoniczne*, vol. 52, nos. 1-2 (2009), 246.

⁷⁶ See CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Ad exsequendam ecclesiasticam*, in *AAS*, 93 (2001), 788, RENKEN, *The Penal Law*, 461.

⁷⁷ For a long period of time as was stated above, the *CCEO* did not raise the issue regarding abuse of minors. It can be assumed that the particular law of the religious institutes did not concern the dismissal of member who committed a delict against chastity with a minor. *VELM 2019*, art. 2, §1 called to establish provisions in the case of allegation of sexual misconduct, which must be in harmony with universal law but often extends its requirements in detail. The typicon of a monastery and the statutes of the order and congregation must promulgate binding norms to give concrete effect to the universal norms. For example, *ROSBM*, rule 530, §§1 and 6 outline that if a member who is the cause of very grave imminent scandal (member commits a delict against chastity with a minor or with a person who habitually lacks the use of reason, or with a person for whom the law recognizes equal protection) he can be immediately expelled from the religious house, required to put off the religious habit, and, if the case warrants, the member must be dismissed from the Basilian Order.

The tribunal of the DDF can entrust the removal from the clerical state by means of an extra-judicial penal process. *CCEO*, canon 1402, §3 prescribes:

If, however, in the judgment of the authority mentioned in §4, there are grave causes that preclude a penal trial and the proofs concerning the delict are certain, the delict can be punished, having observed can. 1291, by an extra-judicial decree according to the norm of cann. 1486 and 1487, provided it does not involve a privation of office, title, insignia, a suspension for more than one year, demotion to a lower grade, deposition, or major excommunication.

The Eastern law is uncompromising in its preference of employing the judicial penal process, especially when it relates to removal from the clerical state.⁷⁸ However, in a case where the delict is reserved to the DDF, the DDF *ex officio* may decide to adjudicate in an extra-judicial penal process.⁷⁹ *CCEO*, canon 1402, §4, which refers to paragraph three, clearly indicates:

This decree can be issued, besides by the Apostolic See, within the limits of their competence, by the patriarch, major archbishop, eparchial bishop, and the major superior of an institute of consecrated life who has ordinary power of governance, all others being excluded.

Following *2021 Normae*, art. 13, and in according with *CCEO*, canon 1402, delegation of the case is allowed, i.e., the DDF may delegate the case to be handled in a penal process by another tribunal.⁸⁰ *CCEO*, canon 1486, §1, 2° stipulates that for the validity of the decree by which a penalty is imposed, an oral discussion must be held with the hierarch, or his delegate, and the accused, with the promoter of justice and a notary being present.⁸¹

⁷⁸ Suspension can be imposed by an extra-judicial decree if a just cause (an immediate threat of a suit, a public scandal) precludes a judicial process, that is, the cause may require more expeditious resolution of the case than the judicial process can provide. See J.H. PROVOST, "Suspension without Judicial Process," in A.J. ESPELAGE (ed.), *CLSA Advisory Opinions 1994-2000*, Washington, DC, CLSA, 2002, 438.

⁷⁹ See *Vademecum*, no. 92, in *AAS*, 114 (2022), 939, RENKEN, *Substantive Law*, 642.

⁸⁰ See F.C. EASTON, "Determination of Type of Penal Process," in *Practical Comm*, vol. 2, 2521.

⁸¹ See LLOBELL, "Due Process," 201.

By virtue of *2021, Normae*, art. 9, §4, when the tribunal of the DDF renders a legitimate judgement, the DDF is not required to submit its decision for the approval of the Supreme Pontiff. Moreover, according to *2021 Normae*, art. 19, §2, the hierarch may impose perpetual expiatory penalty by decree.⁸² *2021 Normae*, art. 16, §2 allows, “[t]he accused and the Promoter of Justice of the Supreme Tribunal of the Congregation for the Doctrine of the Faith may lodge an appeal to the Tribunal within the peremptory time limit of sixty useful days from the publication of the sentence of first instance.”

The sentence becomes *res iudicata*:

1° if a sentence has been rendered in second instance;

2° if an appeal was not proposed within the time limit mentioned in art. 16 §2;

3° if, in the appellate grade, the instance is abated or is renounced.⁸³

Canon law in the judicial penal trial does not require a double confirming sentence.

If there is no appeal against the decision of the first instance trial, the sentence becomes definitive.⁸⁴

⁸² “The Hierarch or his delegate should always remember that, according to article 19 §2 SST, the prohibitions of canon 1402 §2 CCEO are not applicable. Therefore he is able to impose a perpetual expiatory penalty by decree, having obtained the prior mandate of the DDF required by the same article 19 §2 SST. The concession of this prior mandate from the DDF must be explicitly mentioned in the decree” (*Vademecum*, no. 136, in *AAS*, 114 (2022), 947-948, RENKEN, *Substantive Law*, 649-650).

⁸³ *2021 Normae*, art. 18, in *AAS*, 114 (2022), 119, RENKEN, *Substantive Law*, 619.

⁸⁴ See LLOBELL, “Due Process,” 216-217.

“The judicial penal process does not require a double confirming sentence; consequently, a decision rendered by a sentence in an eventual second instance becomes *res iudicata* (cf. art. 18 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 DDF (cf. art. 16 §2 SST)” (*Vademecum*, no. 88, in *AAS*, 114 (2022), 939, RENKEN, *Substantive Law*, 641).

3.2 — Officers in the Tribunal in Religious Institute

To validity function in judicial trials, all officers and officials forming the tribunal⁸⁵ of the religious institute (in which in the superiors are granted power of governance by law or by the authority to which they are subject), must possess specific qualifications.⁸⁶ The lack of some requirements⁸⁷ does not result in the act of a judicial trial being determined as invalid, however, the liceity of the appointment of the officers may be questioned.⁸⁸

3.2.1 — Moderator of Tribunal

The major superior who lawfully holds his office is endowed with judicial power.⁸⁹ He stands as moderator who, at the same time, exercises the administrative power to appoint the officers⁹⁰ in a legitimately established religious tribunal as a competent authority to exercise judicial power, similar to a moderator for the administration of justice in the tribunals within the territorial boundaries of the patriarchal Church.⁹¹ This superior is to function, in a penal judicial trial, as a *praeses* judge *ipso iure*. All the faculties of the

⁸⁵ The term *tribunal* is to be understood as the exercise of judicial authority constitutes according to law, rather than as a physical or institutional structure.

⁸⁶ Canon law establishes norms for the appointment of officers for judicial tribunals; however, canon law is silent regarding the judicial tribunals of religious institutes. This silence may suggest that canon law leaves a certain flexibility for the institute's own law. Nevertheless, it is advisable for religious institutes to adhere to the same standards as other judicial tribunals in the appointment of officers. However, the particular law of a religious institute may limit the power of the major superior, potentially requiring that the appointment of officers be under the consent or opinion of the major superior's council.

⁸⁷ See W.A. SCHUMACHER, "Dispensation from Requirement of Canonical Degrees," in ID., *Roman Replies and CLSA Advisory Opinions 1983*, Washington, DC, CLSA, 1983, 8-9.

⁸⁸ See J.H. PROVOST, "The Requirement of Canon Law Decrees for Court Officials," in *J*, 43 (1983), 423.

⁸⁹ See W.L. DANIEL, "Tribunal of the Synod of Bishops and General Moderator of the Administration of Justice," in *Practical Comm*, vol. 2, 2005.

⁹⁰ See W.L. DANIEL, "Tribunal Statutes," in *Practical Comm*, vol. 2, 2023.

⁹¹ See *CCEO*, c. 1062, §5.

presiding judge indicated in canon law are proper to him.⁹² He cannot delegate his judicial power to another person.⁹³ The collegiate tribunal is obliged to proceed collegially to render its decision.⁹⁴

The executive power of the major superior, who is endowed with judicial power, flows from his office, which gives him the right to exercise the internal management and vigilance over the tribunal.⁹⁵ This right is exclusive and solely granted to him. *CCEO*, canon 1070 states:

Any authority that erects a tribunal is to take care that the tribunal has its own statutes approved by the same authority, in which must be determined the manner of appointing judges and other officers, the duration of their function, their remuneration, and all the other matters required by law.

In exercising vigilance and executive power over the tribunal, a major superior who establishes a tribunal also approves the statutes,⁹⁶ and appoints the following personnel: the judges⁹⁷ who, together with the major superior, constitute the collegial tribunal,⁹⁸ a promoter of justice and a notary. In the penal judicial trial, the accused must always have

⁹² See DANIEL, “Tribunal of the Synod of Bishops and General Moderator of the Administration of Justice,” 2006.

⁹³ See DANIEL, “Competence in Causes Involving Institutes and Members of Consecrated Life,” 2022.

⁹⁴ See *CCEO*, c. 1085, §1; see also LLOBELL, “Due Process,” 177.

⁹⁵ See DANIEL, “Tribunal of the Synod of Bishops and General Moderator of the Administration of Justice,” 2006.

⁹⁶ The term *tribunal* is understood in a juridic sense as the lawful exercise of judicial authority by those duly appointed, and not as a physical or institutional entity. Accordingly, the statutes in question regulate both the static elements (constitution and office) and the dynamic elements (procedure and functioning) of the judicial process. They are not primarily directed toward a physical structure, but toward the persons who constitute the tribunal in law. In this respect, the requirement of statutes is analogous to that of the college of eparchial consultants (see *CCEO*, c. 271), which likewise governs a juridic body rather than a material institution.

⁹⁷ See *CCEO*, c. 1087.

The judge possesses ordinary vicarious power (see *CCEO*, c. 981, §1), as long as he or she legitimately holds the ecclesiastical office. Cf. D.S. BREWER, “Appointment of Judge by Judicial Vicar,” in K.W. VANN and J.I. DONLON (eds.), *Roman Replies and CLSA Advisory Opinions 1997*, Washington, DC, CLSA, 1997, 88-90.

⁹⁸ Cf. *CCEO*, c. 1090, §1.

an advocate, whom he chooses from a list of advocates approved by the same major superior. A major superior may appoint any personnel to his established religious tribunal from within or outside of his own religious institute;⁹⁹ that is, a person from another tribunal, a religious from another religious institute who has the qualifications to fulfil these functions, or a person who possesses a degree in canon law, and, most importantly, has gained experience in penal judicial trials.

3.2.2 — Judges in a Collegiate Tribunal

The appointment of a judge and the duties involved in a judicial trial are determined by the *CCEO*. Ecclesiastical law defines the qualifications that a judge must possess and the tasks he is to be involved in,¹⁰⁰ i.e., the recognition and resolution of the dispute for public and private welfare.¹⁰¹

The major superior, in appointing judges, follows *CCEO*, canon 1087:

§1. In an eparchy, the eparchial bishop is to appoint eparchial judges, who are to be clerics.

§2. The patriarch after having consulted the permanent synod, or the metropolitan who presides over a metropolitan Church *sui iuris* after having consulted the two eparchial bishops senior by episcopal ordination, can permit that other members of the Christian faithful also be appointed judges. When it is necessary, one of them can be taken to form a college; in other cases, the Apostolic See is to be approached regarding this matter.

§3. Judges are to be of unimpaired reputation and doctors or at least licensed in canon law and esteemed for prudence and zeal for justice.

⁹⁹ Cf. *CCEO*, c. 1102, §1.

¹⁰⁰ See R. SOBAŃSKI, “Uwagi o tożsamości sędziego kościelnego [Remarks on the Identity of an Ecclesial Judge],” in *Prawo kanoniczne*, vol. 45, nos. 3-4 (2002), 5.

¹⁰¹ See A.M. CZAJA, “Sędzia w procesie o stwierdzenie nieważności małżeństwa [Judge in a Marriage Annulment Trial],” in R. KANTOR (ed.), *Struktura i działalność Sądu Diecezjalnego w Tarnowie w latach 1983-2015 [The Structure and Activity of the Diocesan Tribunal in Tarnów in the Years 1983-2015]*, Kraków, Uniwersytet Papieski Jana Pawła II, 2016, 30; see also R.J. BOWERS, *Episcopal Power of Governance in the Diocesan Church: From the 1917 Code of Canon Law to the Present*, Canon Law Studies, no. 535, Washington, DC, The Catholic University of America, 1990, 27.

The major superior may appoint judges who are clerics,¹⁰² – bishops, priests or deacons,¹⁰³ – who are “ministers of the Church, participating in the mission and power of Christ the Pastor.”¹⁰⁴

The patriarch, after consulting the permanent synod¹⁰⁵ and the Apostolic Signatura,¹⁰⁶ may permit other Christian faithful to be appointed as judges.¹⁰⁷ The 1982 Schema *canonum de tutela iurium seu de processibus* indicated that the appointment of judges was a non-permanent office,¹⁰⁸ which was ultimately not included in the *CCEO*. The law does not exclude consecrated individuals (men and women)¹⁰⁹ for appointment as judges, provided they are outstanding in good morals and endowed with prudence and sound doctrine.¹¹⁰

¹⁰² “[i]n qualibet eparchia, nonnulli presbyteri [...] est iudicum eparchialium” (PIUS XII, motu proprio on Trials for the Eastern Churches *Sollicitudinem Nostram*, 6 January 1950, c. 41, §1, in *AAS*, 42 (1950), 14).

CCEO, canon 1087 introduces that clerics instead of the only priests can become judges in the eparchy. Cf. *Nuntia*, 14 (1982), 7.

¹⁰³ See W.L. DANIEL, “Other Judges,” in *Practical Comm*, vol. 2, 2048.

¹⁰⁴ *CCEO*, c. 323.

¹⁰⁵ See ABBASS, “Trials in General,” 867.

¹⁰⁶ See DANIEL, “Other Judges,” 2050. Regarding the requirements for the appointment of a layperson/religious brother in penal cases, the address is directed to the Apostolic Signatura; in cases concerning *graviora delicta* – to the DDF. See *2021 Normae*, art. 14, in *AAS*, 114 (2022), 118, RENKEN, *Substantive Law*, 618.

¹⁰⁷ “The norm of the law is clear: the lay judge may only serve to complete the college of judges and, therefore, may not serve as a tribunal of a single judge” (R.L. BURKE, “The Nullity of a Decision by a Single Lay Judge,” in K.W. VANN and J.I. DONLON (eds.), *Roman Replies and CLSA Advisory Opinions 1994*, Washington, DC, CLSA, 1994, 145); see J.H. PROVOST, “The Participation of the Laity in the Governance of the Church,” in *StC*, 17 (1983), 438.

“qui pari atque ceteri iudices potestate iudiciali fruens sententiam de merito causae fert ac subsignat” (*Nuntia*, 14 (1982), 7).

¹⁰⁸ “Laicis hoc stabile munus conferri nequit” (*Nuntia*, 14 (1982), 7).

¹⁰⁹ See DANIEL, “Other Judges,” 2049; see also J.H. PROVOST, “Role of Lay Judges,” in *J*, 45 (1985), 327.

¹¹⁰ “bonis moribus, prudentia ac doctina fulgeant” (*Nuntia*, 14 (1982), 7).

CCEO, canon 1188, §1 allows a clerical judge to exercise his office as a sole judge in a penal judicial trial in the first instance. The major superior with judicial power may exercise this function as a sole judge.¹¹¹ In a trial, *CCEO*, canon 1089, states that the major superior can employ two assessors¹¹² who will consult with the sole judge.¹¹³ In a collegial tribunal, the major superior is a *praeses*.¹¹⁴ The judicial decision must be issued collegially, and must flow from the will of at least a majority of the college of judges.¹¹⁵ The statutes of the religious tribunal outline all necessary qualifications of judges and the method of their appointment.

¹¹¹ If the major superior decides to exercise the judicial power as single judge, even if he appoints two assessors, this will not differ from when he exercises the executive power on the extra-judicial dismissal. Canon law allows for a single judge in a penal judicial trial; however, in the religious tribunal, it does not make any sense.

¹¹² An assessor is a person who gives counsel to a judge regarding any questions which touch upon the merits or conduct of the trial; he advises a judge about the dispositive part of the sentence and the supporting reasons. His or her task must be determined by the judge in the trial or the statutes of the tribunal. See W.L. DANIEL, "Assessors," in *Practical Comm*, vol. 2, 2052-2053.

Pope Paul VI stated that an assessor must be outstanding in the Catholic faith, of good morals and possessing knowledge of canon law. See PAUL VI, Apostolic Letter *motu proprio* by Which Certain Rules Are Given to Make Marriage Processes in the Eastern Churches Expeditious *Cum matrimonialium causarum*, 8 September 1973, no. 7, in *AAS*, 65 (1973), 579.

When appointing an assessor to the tribunal, the competent authority should bear these qualities in mind. In order to fulfill the role of minister of the tribunal, the assessor must be appointed by the decree of the moderator of the tribunal, unless he or she holds any other offices in the tribunal. See DANIEL, "Assessors," 2053.

¹¹³ Christian faithful cannot assume the role of a single judge in a trial for "such judges do not possess judicial power as this is possessed by the collegial tribunal itself" (M. FRANCIS, "What Is the Potential for Collegial and Sole Lay Judges on Ecclesiastical Tribunals?" in *The Canonist*, 8 (2017), 133).

¹¹⁴ Cf. Z. GROCHOLEWSKI, Commentary on c. 1421, in *Exegetical Comm*, vol. 4/1, 733-734.

In a religious institute where the major superior is not in a sacred order and is endowed with the judicial power, he or she must appoint a judge who is in a sacred order as a *praeses*.

¹¹⁵ See ABBASS, "Trials in General," 850; see also W.L. DANIEL, "Collegial Decisions, Acts of the *Ponens* and Correspondence of Instances," in *Practical Comm*, vol. 2, 2042.

3.2.3 — Tribunal Officials

In order for a tribunal, as a juridic authority¹¹⁶ consisting of duly appointed officials in accordance with canon law, to function properly, officers are required to fulfill specific duties in addition to the judges in the judicial penal trial.

3.2.3.1 — Promoter of Justice

The promoter of justice is the vindicator of law, the protector of justice and protector of the law of the Church.¹¹⁷ His or her essential duties are required in order to protect the public good and to prevent public harm:¹¹⁸

A promoter of justice is to be appointed in an eparchy for contentious cases that can endanger the public good and for penal cases. The promoter of justice is bound by the obligation to provide for the public good.¹¹⁹

Following the norm of the *CCEO*, in the same manner as an eparchial bishop, the major superior is obliged, *ad validitatem*, to appoint a promoter of justice for a religious tribunal. A promoter of justice, “provides for the public good;”¹²⁰ however, he or she is not endowed with the power of governance.¹²¹ The individual who functions as the promoter of justice must be of an unimpaired reputation, hold a doctorate level degree, or at least a licentiate in canon law, and have a proven reputation in prudence and zeal for justice.¹²²

¹¹⁶ See footnote 96 (page 157).

¹¹⁷ See LLOBELL, “Due Process,” 201.

¹¹⁸ See W.L. DANIEL, “Promoter of Justice,” in *Practical Comm*, vol. 2, 2061.

¹¹⁹ *CCEO*, c. 1094.

¹²⁰ DANIEL, “Promoter of Justice,” 2061.

¹²¹ “[...] a greater participation in the ministerial priesthood cannot be required in the defender of the bond, who exercises no jurisdiction, than in the judge [...]” (SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, “Declaratio de munere Defensoris Vinculi Diacono permanenti committendo,” 12 November 1977, in *Communicationes*, 9 (June 1977), 226).

¹²² See *CCEO*, c. 1099, §2.

In all judicial penal cases, the promoter of justice must be part of the process.¹²³ *CCEO*, canon 1472, §1 states the promoter of justice introduces the case (presents the *libellus* accusing a person of committing a delict), and bears the right to do so, as the delict committed, by its very nature, involves a disturbance of the public good. *CCEO*, canon 1469, §3 underscores the fact that the hierarch (the major superior) first hears the statement of the promoter of justice before starting a judicial penal process or extra-judicial penal process.¹²⁴

The statutes of the religious tribunal are to succinctly describe the regulations required for a promoter of justice, the method of appointment, etc.

3.2.3.2 — Notary

“Given the gravity of the administration of justice, it is critical that the activity of the judge be protected with guarantees of juridic certitude and authenticity.”¹²⁵ *CCEO*, canon 1101 states:

§1. A notary is to take part in any process, such that the acts are to be considered null if the notary has not signed them.

§2. Acts that notaries draw up warrant public trust.

CCEO, canon 243, §2 states that the notary is an officer of the eparchial curia.

Wherefore the judge, before starting a case, can only appoint the notary from those already legitimately constituted in the office of notary, unless the Hierarch himself has designated someone else for the case.¹²⁶

¹²³ See LLOBELL, “Due Process,” 201.

¹²⁴ See INGELS, “The Safeguarding Rights,” 61.

¹²⁵ W.L. DANIEL, “Notary,” in *Practical Comm*, vol. 2, 2074.

¹²⁶ “Quare iudex, antequam causam cognoscere incipiat, actuarium assumat unum e notariis legitime constitutis, nisi ipse Hierarcha aliquem ad eam causam iam designaverit” (PIUS XII, *Sollicitudinem Nostram*, c. 56, §2, in *AAS*, 42 (1950), 17).

Similar to the eparchy, in each religious institute, the major superior appoints a secretary (who is the notary of the major superior's curia) according to the particular law of his or her own religious institute. He or she may fulfil the function of notary for the religious tribunal; however, the major superior may appoint another person as a notary of the religious tribunal who is more capable to execute this function. The law mandates the selection of a priest to fulfill the position of notary in cases where the reputation of a cleric is called into question.¹²⁷ The person who holds this office must have an *integrae fama*,¹²⁸ and must be recognized as one who is above all suspicion.¹²⁹ The notary co-signs all acts and, with a seal, authenticates any acts whatsoever,¹³⁰ either those of judicial origin or acts pertaining to a certain case or transaction.¹³¹ The statutes of the religious tribunal will determine who may fulfill this function according to the norms of canon law.

3.2.4 — Advocate

The natural right to self-defence¹³² and *CCEO*, canon 1139, §2 demands that in a penal trial, the accused must have an advocate,¹³³ either selected by the accused member

¹²⁷ See P.L. GOLDEN and G. MORRISEY, "Necessity of a Priest Notary During Preliminary Investigation," in A.J. ESPELAGE (ed.), in *CLSA Advisory Opinions 2001-2005*, Alexandria, VA, CLSA, 2006, 148.

¹²⁸ See *CCEO*, cc. 1086, §4, 1087, §3.

¹²⁹ See *CCEO*, c. 253, §2.

¹³⁰ Cf. *CCEO*, cc. 1131, §2, 1315, §2.

¹³¹ Cf. *CCEO*, c. 253, §1.

¹³² See RENKEN, *The Penal Law*, 412; see also F.G. MORRISEY, "The Advocate for the Accused and the Right of the Defense," in P.M. DUGAN (ed.), *Advocacy Vademecum*, Montreal, Wilson & Lafleur Ltée, 2006, 17.

¹³³ See JOHN PAUL II, Allocution to the Roman Rota, 26 January 1998, in *AAS*, 81 (1989), 923, WOESTMAN, *Allocutions*, 205.

or appointed by the judge *ex officio*.¹³⁴ According to *CCEO*, canon 1141, the advocate must hold a doctoral degree in canon law or bear knowledge within this realm, i.e., “have the requisite expertise in the area [penal, religious experience] of law.”¹³⁵ In order to assume the function of advocate in a religious tribunal, the individual must be approved by the same authority (the major superior) of the tribunal.¹³⁶ The advocate is assigned to a penal case by mandate of a major superior to proceed with the case on behalf of the accused person and to guarantee the justice of the decision.¹³⁷

The role of an advocate includes asserting the legal merits of the case¹³⁸ and offering technical assistance to the accused party through advice, argumentation and legal drafting.¹³⁹ The advocate who administers the case, “acts on *behalf* of a person, presenting arguments, so as to build up the case.”¹⁴⁰ The advocate is not considered to be part of the tribunal.¹⁴¹

3.3 — Competent Tribunals for Dismissal of Religious from the Religious Institute

CCEO, canon 501, §4 states that a religious member has the right to a judicial process in a case of dismissal from a religious institute:

If the case is to be handled judicially, it is to be dealt with by the tribunal of the authority immediately superior to the one that has confirmed the decree of dismissal. However, the superior who has issued the decree of dismissal is to hand over the acts assembled in the matter

¹³⁴ See F.G. MORRISEY, “Some Thoughts on Advocacy in Non-Matrimonial Cases,” in *J*, 53 (1993), 307.

¹³⁵ D.L. BARR, “Advocacy and Professional Ethics for Canonist,” in *CLSA Proceedings*, 67 (2005), 86.

¹³⁶ Cf. MORRISEY, “The Advocate for the Accused and the Right of the Defense,” 11.

¹³⁷ See LLOBELL, “Due Process,” 190.

¹³⁸ Cf. NEDUNGATT, *A Guide to the Eastern Code*, 736.

¹³⁹ See W.L. DANIEL, “Right or Obligation to Have a Procurator or Advocate,” in *Practical Comm*, vol. 2, 2122.

¹⁴⁰ MORRISEY, “Some Thoughts on Advocacy in Non-Matrimonial Cases,” 308.

¹⁴¹ See BARR, “Advocacy and Professional Ethics for Canonist,” 78.

to the same tribunal; it is to proceed according to the canons regarding a penal trial, with no appeal.

After a religious member lodges a request of appeal against a decree of dismissal, the superior (of a monastery, order or congregation, whether of eparchial, patriarchal or of pontifical right) who has rendered the decree of dismissal shall transmit the acts collected in the matter to the immediate superior, who is competent to constitute the tribunal and adjudicate the case in the second instance.¹⁴² The case shall be processed according to *CCEO*, canons 1471-1482, regarding the delict on penal trials. The current legislation (after amendment of *CCEO*, canon 501, §2), allows all religious, of eparchial, patriarchal or pontifical right (whether they belong to monasteries, orders or congregations), the right to have the case handled judicially. Canon law excludes further appeal against the sentence where a request of appeal has been lodged.¹⁴³

3.3.1 — Dismissal of Religious of Eparchial Right

The *CCEO* identifies three possibilities for a judicial process to be conducted for a religious, whether he or she belongs to a monastery or a congregation of eparchial right, who introduces a request of appeal against a decree of dismissal.¹⁴⁴

¹⁴² Since the term *tribunal* is understood in a juridic sense as the authority competent to judge, and not necessary as a physical or institutional structure, the acts are to be transmitted to the authority competent in the second instance, namely the immediate superior of the authority who issued the decree, or to the person or office designated by him in accordance with particular law. In practice, where no distinct tribunal structure exists, it is sufficient that the request that the case be handled judicially be directed to the superior himself (e.g., the superior general or equivalent authority), who is responsible for ensuring that the case is duly constituted and adjudicated according to canon law. A member who is uncertain of the competent forum may validly address recourse to the superior who issued the decree or to the next higher authority, who is then bound to forward it to the competent authority.

¹⁴³ See PUJOL, *La vita religiosa orientale*, 390.

¹⁴⁴ There are no orders of eparchial right. See *CCEO*, c. 505, §1.

The first possibility involves a member whose religious institute is located within the territorial boundaries of a patriarchal Church where provinces have been established, and he or she has requested that their case is to be handled judicially. The judicial trial is handled by a tribunal of the metropolitan,¹⁴⁵ which is the authority to whom the superior who has confirmed the decree of dismissal is subject.¹⁴⁶

The second possibility is a situation where a member whose religious institute is located within the territorial boundaries of a patriarchal Church (which is not divided into provinces), and he or she has requested that their case be handled judicially. The judicial trial is handled by an ordinary tribunal for the patriarchal Church,¹⁴⁷ which is the authority to whom the superior who has confirmed the decree of dismissal is subject.¹⁴⁸

The third possibility entails a member of a monastery or congregation of eparchial right located outside the territorial boundaries of the patriarchal Church; he or she can only request a judicial trial from a tribunal of the Apostolic See (from the tribunal of Roman Rota), since the bishop is immediately subject to the Roman Pontiff.¹⁴⁹ *CCEO*, canon 1061 provides that, “[p]ersons who do not have a superior authority below the Roman Pontiff, whether they are physical persons who are not constituted in the order of the episcopacy or juridic persons, must be brought before the tribunals of the Apostolic See.”

¹⁴⁵ Cf. *CCEO*, c. 1064, §1.

¹⁴⁶ See ABBASS, “Recourse against Dismissal Decree,” 961.

¹⁴⁷ Cf. *CCEO*, c. 1063, §§1 and 3.

¹⁴⁸ See ABBASS, “Recourse against Dismissal Decree,” 961.

¹⁴⁹ See GIROTTI and KHOURY, Commentary on c. 498, 413.

3.3.2 — Dismissal of Religious of Patriarchal Right

The *CCEO* provides for a judicial process for a religious member who makes a request that his or her case be handled judicially, whether they belong to a monastery, or an order or a congregation of patriarchal right. There is no distinction as to whether the religious institute of patriarchal right is located within or outside the territorial boundaries of the patriarchal Church. The immediate superior to the patriarch is the Roman Pontiff; there are no other mediator superiors. If a member who is undergoing the process of dismissal introduces a request for a judicial process against his or her dismissal decree, the judicial trial will take place in a tribunal of the Apostolic See, such as the tribunal of the Roman Rota.¹⁵⁰

3.3.3 — Dismissal of Religious of Pontifical Right

On October 18, 1990, following rigorous efforts of the PCCICOR,¹⁵¹ Pope John Paul II promulgated the new Eastern Code, wherein *CCEO*, canon 501, §2 stated:

However, the member can, within fifteen days, either make recourse with suspensive effect against the decree of dismissal or, unless the decree of dismissal has been confirmed by the Apostolic See, request that the case be handled judicially.

Canon 501, §2 of 1990 *CCEO* was formulated in a manner that the judicial trial is not available for all perpetual professed religious members.¹⁵²

The 1980 Schema of this canon states:

The decree of dismissal shall be communicated to the concerned monk as soon as possible, with the same possibility, that within ten days of either appealing with suspensive effect to the Patriarch or to the Apostolic See, or to demand, unless the decree of dismissal has been

¹⁵⁰ See ABBASS, *The Consecrated Life*, 281.

¹⁵¹ See J.D. FARIS, *The Eastern Catholic Churches: Constitution and Governance: According to the Code of Canons of the Eastern Churches*, New York, Saint Maron Publications, 1992, 87.

¹⁵² See ABBASS, *The Consecrated Life*, 280-281.

confirmed by the Apostolic See, that the case be handled by the tribunal of the Hierarchy immediately superior to him who issued the decree of dismissal, or to be dealt with in a judicial manner...¹⁵³

During the *denua recognitio* of the 1980 Schema, a study group proposed the omission of the second part of this canon, “unless the decree of dismissal has been confirmed by the Apostolic See, request that the case be handled judicially,” which was supported by two consultors.¹⁵⁴ The other eight consultors thought:

[...], while others are of the opinion that, apart from the judicial process of the *ius vigens*, which only concerns *virii religiosi* with perpetual vows (PA cann. 206-219), unifying the procedure for all the members of the male and female monasteries, it is necessary to give to all, in order to better safeguard justice and human rights, and at least, the possibility of requesting a judicial process. Also, in order not to give the impression that, as a single proponent writes, “the current discipline which requires a process *favorabilior est dimittendo*, while the canon, as proposed, *favet dimissionibus arbitrariis*, because it cannot be assumed that all the members of a monastery, male or female, are able to comprehend the law to the point of understanding, in case of need, well enough in order to request a judicial process as foreseen in the canon.”¹⁵⁵

Even though the study group proposed the option of a judicial request for all religious, *CCEO*, canon 501, §2 limited this option to religious members whose decree was confirmed by the Apostolic See. All religious who belong to monasteries and orders or congregations of pontifical right were excluded from the option of requesting a judicial trial and so are only able to lodge an hierarchical recourse.

¹⁵³ “Decretum dimissionis quamprimum monacho cuius interest communicetur data eidem facultate, intra decem dies, sive recurrendi cum effectu suspensivo ad Patriarcham vel ad Sedem Apostolicam, sive postulandi, nisi decretum dimissionis a Sede Apostolica confirmatum est, ut causa apud tribunal Hierarchae immediate superioris ei qui decretum dimissionis, confirmavit iudiciali modo pertractetur [...]” (*Nuntia*, 11 (1980), 36-37, c. 84).

¹⁵⁴ See NEDUNGATT, *A Guide to the Eastern Code*, 374.

¹⁵⁵ “[...], altri invece sono dell’opinione che, tolto il processo giudiziario dello *ius vigens*, che riguarda solamente i *virii religiosi* con i voti perpetui (PA cann. 206-219), e unificata la procedura per tutti i membri dei Monasteri maschili e femminili, bisogna lasciare a tutti, per salvaguardare maggiormente la giustizia ed i diritti dell’uomo, almeno la possibilità di richiedere un processo giudiziario, anche per non dare l’impressione che, come scrive un singolo proponente, «l’attuale disciplina che esige un processo *favorabilior est dimittendo*, mentre il canone, come proposto, *favet dimissionibus arbitrariis*, perché non si può supporre che tutti i membri di un Monastero, maschile o femminile, siano in grado di conoscere il diritto al punto di sapere, in caso di necessità, richiedere un processo giudiziario come previsto nel canone»” (*Nuntia*, 16 (1983), 70).

In the promulgation of *CQD*, on 11 February 2022, Pope Francis amended *CCEO*, canon 501, §2, i.e., deleting the clause, “unless the decree of dismissal has been confirmed by the Apostolic See,” in order to safeguard the reasonable principles of effectiveness and efficiency, and to unify the disciplinary action of the Church. The option of presenting a request of appeal against a decree of dismissal is now given to all members with perpetual profession who are undergoing the process of dismissal, whether they belong to monasteries or orders and congregations of pontifical, patriarchal or eparchial right.

Any member from any religious institute of pontifical right can submit a request to have a judicial process in a tribunal of the Apostolic See. As stated above in 3.3.2, regarding the dismissal of a religious of patriarchal right, the same norms are applied to monasteries or orders or congregations of pontifical right.

3.3.4 — Tribunals to Adjudicate

The *CCEO* and the universal law place a limit on the number of special tribunals that are competent in a judicial process in order to adjudicate an accused religious member.

3.3.4.1 — Supreme Apostolic Tribunal

2021 Normae, art. 1, of *gravioribus delictis* outlines:

§1. The Congregation for the Doctrine of the Faith, according to art. 52 of the Apostolic Constitution *Pastor Bonus*, judges delicts against the faith, in accordance with art. 2 §2, and also the more grave delicts committed against morals and in the celebration of the sacraments and, whenever necessary, proceeds to declare or impose canonical sanctions according to the norm of both common and proper law, with due regard for the competence of the Apostolic Penitentiary and in keeping with *Agendi ratio in doctrinarum examine*.

§2. With regard to the delicts mentioned above in §1, the Congregation for the Doctrine of the Faith, by mandate of the Roman Pontiff, may judge Cardinals, Patriarchs, Legates of the Apostolic See, Bishops as well as other physical persons mentioned in 1405 §3 of the Code of Canon Law (=CIC), and in can. 1061 of the Code of Canons of the Eastern Churches (=CCEO).

§3. The Congregation for the Doctrine of the Faith judges the reserved delicts mentioned in §1 according to the following norms.

On March 19, 2022, Pope Francis promulgated the new apostolic constitution on the Roman curia and its service to the Church and to the world *Praedicate Evangelium* (=PE). PE, art. 76, §§1-2 confirms the function of the disciplinary section in the DDF:

§1. The Disciplinary Section, through its disciplinary office, deals with delicts reserved to the Dicastery and adjudicated by the Supreme Apostolic Tribunal established therein, which then declares or imposes canonical sanctions according to the norm of law, both common and proper, without prejudice to the competence of the Apostolic Penitentiary.

§2. With regard to the delicts mentioned in §1, the Section, by mandate of the Roman Pontiff, will judge Cardinals, Patriarchs, Legates of the Apostolic See and Bishops, as well as other physical persons, in conformity with canonical provisions.

The disciplinary section is the Supreme Apostolic Tribunal established in the DDF, which adjudicates delicts reserved to the DDF. The Supreme Apostolic Tribunal is composed in accordance with *2021 Normae*, arts. 12-15, which describe the qualities of personnel.¹⁵⁶ This disciplinary section, according to PE, art. 76, §1, proceeds to declare or impose canonical sanctions.

If a religious member is a priest of whatever juridic condition who is accused of a delict reserved to the DDF, the DDF solely adjudicates the case. The DDF may delegate adjudication of a case to another tribunal, as was stated in 3.1.3 regarding the penal judicial

¹⁵⁶ In any lawfully established tribunal, which includes tribunals in monasteries or clerical orders and congregations of pontifical or patriarchal right, all requirements must be fulfilled according to *2021 Normae*, art. 13, in order to validly fulfill functions such as judge, promoter of justice, notary and chancellor, advocate and procurator. See GREEN, “*Sacramentorum sanctitatis tutela: Reflections*,” 143-144.

According to *2021 Normae*, art. 14, a person who fulfills the functions, such as judge, promoter of justice, notary or chancellor, requires dispensation from the requirement of priesthood; the hierarch must request this dispensation from the DDF. See P.O. AKPOGHIRAN, *Delicta graviora manual. A Commentary on Articles 8-20 of the Normae de gravioribus delictis Congregationi pro doctrina fidei reservatis*, 2nd ed., vol. 2, New Orleans, LA, Guadalupe Book Publishers, 2020, 10.

It is the *praxis* of the DDF, “to grant dispensation *ad casum* to a particular person and granting a dispensation in one case does not guarantee that the CDF will grant the same person the same dispensation in a different case” (J.P. KIMES, “Impugning Decisions in Cases of *delicta reservata*,” in C. PAPAIE (ed.), *La procedura nei delitti riservati alla Congregazione per la Dottrina della Fede*, Quaderno Ius Missionale, no. 12, Rome, Urbaniana University Press, 2018, 113).

trial for *graviora delicta*. A religious priest who is found guilty of this delict, according to its severity, may be removed from the clerical state. Regarding dismissal of a member from a religious institute, the case is to be entrusted to the decision of a major superior in accordance with the particular law of the religious institute.

3.3.4.2 — Tribunal of the Roman Rota

CCEO, canon 1065 simply states that: “[t]he tribunal of third grade is the Apostolic See, unless canon law expressly provides otherwise.” Only the patriarchal or major archiepiscopal Churches *sui iuris* are competent to adjudicate causes in second and further instances, until the matter becomes a *res (quasi-)iudicata*.¹⁵⁷

The Roman Rota regulates the composition of the tribunal by the norms of *PE*, art. 201, §§1-2, and by the norms of the Apostolic Tribunal of the Roman Rota, *Quammaxime decet*.¹⁵⁸ *Quammaxime decet* expressly establishes the fact that the jurisdiction and competence of the tribunal of the Roman Rota are regulated by the *CIC* and the *CCEO*, and by the constitution *Pastor bonus*.¹⁵⁹ The adjutant promoter of justice deals with causes of the Christian faithful of the Eastern rites.¹⁶⁰ He has the authority to

¹⁵⁷ Cf. *CCEO*, c. 1063, §3.

¹⁵⁸ See TRIBUNAL OF THE ROMAN ROTA, The Norms of the Apostolic Tribunal of the Roman Rota *Quammaxime decet*, 18 April 1994 (= *QD*), arts. 4, §1; 13; 18, §§1-4; 23; 24, §1, in *AAS*, 86 (1994), 510-516; see also B.S. THARAKUNNEL, “Patriarchal/Major Archiepiscopal Ordinary Tribunal as Tribunal of Third and Further Instances,” in *Ius*, vol. 6, no. 1 (June 2015), 103; see also E. FLAIANI, “The Tribunal of the Roman Rota and Its Archives,” in *Mitteilungen des Instituts für österreichische Geschichtsforschung*, vol. 121, no. 2 (November 2013), 394; see also H. ALWAN, “Il Tribunale Apostolico della Rota Romana ed il *Codex canonum Ecclesiarum orientalium (CCEO)*,” in *Iura Orientalia*, 6 (2010), 35-36.

¹⁵⁹ See *QD*, art. 5, in *AAS*, 86 (1994), 510.

¹⁶⁰ “Adiunctus prae ceteris e ritibus orientalibus assumetur” (*QD*, art. 6, §2, in *AAS*, 86 (1994), 511).

carry out the office of defender of the bond in other cases where he has not intervened as a promoter of justice.¹⁶¹

According to *PE*, arts. 200, §1 and 204, the tribunal of the Roman Rota acts as an appellate court of higher instance at the Apostolic See, and is governed by its own proper law. It is a universal appellate tribunal which represents the entire Catholic Church, and exercises judicial power in the name of the Supreme Pontiff.¹⁶² According to *PE*, art. 202:

§1. The Tribunal of the Roman Rota adjudicates in second instance cases that have been decided by ordinary tribunals of first instance and referred to the Holy See by legitimate appeal.

§2. It adjudicates in third or further instances cases already decided by the same Apostolic Tribunal and by any other tribunals, unless they have become *res iudicata*.

Following *PE*, art. 200, §1, the main purpose of the tribunal of the Roman Rota is to safeguard rights within the Church, to foster unity of canonical jurisprudence and to provide assistance to lower tribunals.

The Roman Rota is the second and higher instance for religious institutes of pontifical right.

3.3.4.3 — Tribunals within Churches *sui iuris*

The *CCEO* allows the introduction of a request for a judicial process against a decree of dismissal of religious members from religious institutes solely in patriarchal and major archiepiscopal churches *sui iuris* within their territorial boundaries on a local level. In other words, the judicial process is handled by a tribunal of the metropolitan, or an ordinary tribunal for the patriarchal Church.

¹⁶¹ “Promotor iustitiae Adiunctus operam potissimum dat in causis christifidelium rituum orientalium” (*QD*, art. 7, §3, in *AAS*, 86 (1994), 511).

¹⁶² See W.L. DANIEL, “Ordinary Tribunal of the Patriarchal Church,” in *Practical Comm*, vol. 2, 2008; see also ALWAN, “Il Tribunale Apostolico della Rota Romana,” 30.

3.3.4.3.1 — Ordinary Tribunal

CCEO, canon 1063, §1 obliges the patriarch of a Church *sui iuris* to establish an ordinary tribunal of his patriarchal Church, which serves the entire Church *sui iuris*: “[t]he patriarch must erect the ordinary tribunal of the patriarchal Church, distinct from the tribunal of the eparchy of the patriarch.” This tribunal is a judicial tool of the patriarchal curia.¹⁶³ The general moderator for the administration of justice performs direct vigilance over this tribunal.¹⁶⁴ This ordinary tribunal of the patriarchal Church resembles a type of tribunal of the Roman Rota,¹⁶⁵ i.e., in terms of the characteristics of its fundamental composition, its procedural arrangements and its matters of jurisdiction.¹⁶⁶ Žužek states:

Besides, the “tribunal ordinarium Ecclesiae patriarchalis” that the patriarch must constitute becomes a kind of “Rota” for the patriarchal Churches, that can judge in all the “gradus iudicii” (can. 1063). There was some difficulty regarding how to indicate the competence of the tribunals of the Apostolic See; this was resolved by the clause “salva competentia Sedis Apostolicae” introduced in §1 of can. 1062. One had in mind the Apostolic Signatura which, in the universal Church, “consulit ut iustitia recte administretur” according to art. 121 of the apostolic constitution *Pastor Bonus*.¹⁶⁷

This ordinary tribunal of the patriarchal Church is composed of the necessary officials who are chosen from the entire Church *sui iuris*, or from another Church *sui iuris*, including the Latin Church.¹⁶⁸ The patriarch, who is *pater* for his entire church, does not

¹⁶³ See *CCEO*, c. 114, §1; see also DANIEL, “Ordinary Tribunal of the Patriarchal Church,” 2009.

¹⁶⁴ See *CCEO*, c. 1062, §5; see also THAZHATH, “Administration of Justice in the Patriarchal Churches,” 500.

¹⁶⁵ See J. ABBASS, “The Eastern Code Turns Thirty: Finding Its Place in the One *Corpus Iuris Canonici*,” in *Ius*, vol. 11, no. 1 (June 2020), 54-55; see also H. ALWAN, “L’evoluzione storico-giuridica della competenza della Rota Romana circa le cause delle Chiese Orientali,” in *Quaderni dello Studio Rotale*, 20 (2010), 175.

¹⁶⁶ See ALWAN, “Il Tribunale Apostolico della Rota Romana,” 35.

¹⁶⁷ I. ŽUŽEK, “Alcune note circa la struttura delle Chiese Orientali,” in ID., *Understanding the Eastern Code*, Kanonika, no. 8, Rome, Pontificio Istituto Orientale, 1997, 141.

¹⁶⁸ See *CCEO*, cc. 934, §1, 1102, §1; see also ABBASS, “The Eastern Code Turns Thirty,” 47.

possess judicial power in this tribunal.¹⁶⁹ The personnel of the ordinary tribunal of a patriarchal Church are appointed by a decree¹⁷⁰ of the patriarch. To appoint the personnel the patriarch is first to obtain the consent of the permanent synod. The judges in this tribunal exercise vicarious judicial power of all bishops of the Church *sui iuris*.¹⁷¹ The president¹⁷² and judges, “following the policy of the Roman Rota,”¹⁷³ are appointed for a determined time frame.¹⁷⁴ The promoter of justice and the defender of the bond¹⁷⁵ are appointed according to the norm of the statutes of the ordinary tribunal of the patriarchal Church.¹⁷⁶ The notaries and auditors are appointed according to *praxis*.¹⁷⁷

CCEO, canon 1063, §2 stipulates that the removal of the president, judges, promoter of justice and the defender of the bond of this tribunal is reserved to the agreement of the entire synod of bishops of the patriarchal Church,¹⁷⁸ and only for a grave reason, with due regard for equity.¹⁷⁹ This decision is mandated by an absolute majority of those who are

¹⁶⁹ Cf. *Nuntia*, 5 (1977), 13, c. 8; see M. MADAPPALLIKUNNEL, *The Tribunals of a Major Archiepiscopal Church*, JCD thesis, Rome, Pontifical University of the Holy Cross, 1999, 252; see also J. ABBASS, “Delegation of Appellate Competence,” in F.S. PEDONE and P.D. COUNCE (eds.), *Roman Replies and CLSA Advisory Opinions 2006*, Washington, DC, CLSA, 2006, 114.

¹⁷⁰ See *CCEO*, c. 1510, §2, 1°.

¹⁷¹ See DANIEL, “Ordinary Tribunal of the Patriarchal Church,” 2010.

¹⁷² The president of the ordinary tribunal of the patriarchal Church fulfills all the specifics of the role as dean of the Roman Rota or the judicial vicar in the eparchial tribunal. He is responsible for exercising the internal management and the vigilance over the tribunal. See THAZHATH, “Administration of Justice in the Patriarchal Churches,” 502.

¹⁷³ THAZHATH, “Administration of Justice in the Patriarchal Churches,” 502.

¹⁷⁴ Cf. *CCEO*, c. 1088, §1.

¹⁷⁵ See I. ŽUŽEK, “Un Codice per una «varietas Ecclesiarum»,” in *ID.*, *Understanding the Eastern Code*, Kanonika, no. 8, Rome, Pontificio Istituto Orientale, 1997, 252-253.

¹⁷⁶ Cf. *CCEO*, c. 1099, §1.

¹⁷⁷ Cf. *CCEO*, cc. 123, §2, 1093, §2.

¹⁷⁸ See A. THAZHATH, “The Superior and Ordinary Tribunals of a *sui iuris* Eastern Catholic Church,” in *StC*, 29 (1995), 392.

¹⁷⁹ See *CCEO*, c. 975, §§1-2.

present. When the majority of those who must be summoned are present,¹⁸⁰ or unless the statutes of the synod of bishops of the patriarchal Church provide otherwise.¹⁸¹ Therefore, canon law ensures the authority of judges appointed by the patriarch *cum consensu Synodi permanentis*, and also ensures their freedom to pronounce sentences according to their conscience, without any threat to the stability of their office. Thus, they cannot be removed against their will if the pronouncement is not conferred by the synod of bishops itself.¹⁸²

However, *CCEO*, canon 1063, §2 determines that the patriarch may accept the resignation (submitted in writing or orally before two witnesses and the patriarch)¹⁸³ of any officials of the tribunal.¹⁸⁴ This is a free decision, made by an individual;¹⁸⁵ it must be executed within three months from the date it occurred.¹⁸⁶

According to *CCEO*, canon 1063, §3, the hierarchy in the ordinary tribunal, the *turnus* system of adjudication,¹⁸⁷ and the subordination to a synod of bishops of the respective patriarchal Church, i.e., to collective authority rather than to an individual (e.g., patriarch or eparchial bishop), support this tribunal in its endeavour to function effectively.¹⁸⁸

¹⁸⁰ Cf. *CCEO*, c. 924, 1°.

¹⁸¹ See *CCEO*, cc. 107, §2, 113.

¹⁸² Cf. *Nuntia*, 5 (1977), 14.

¹⁸³ Cf. *CCEO*, c. 969.

¹⁸⁴ See THAZHATH, “The Superior and Ordinary Tribunals,” 392.

¹⁸⁵ See DANIEL, “Ordinary Tribunal of the Patriarchal Church,” 2011.

¹⁸⁶ Cf. *CCEO*, c. 970, §1.

¹⁸⁷ “While setting up a collegiate tribunal, the president nominates also the president of the bench and follows the order of successive benches (*turnus*) on the stable list (c. 1090, §1)” (THAZHATH, “The Superior and Ordinary Tribunals,” 394).

¹⁸⁸ See THARAKUNNEL, “Patriarchal/Major Archiepiscopal Ordinary Tribunal,” 108.

3.3.4.3.2 — Metropolitan Tribunal

The Metropolitan shall establish the metropolitan tribunal in the patriarchal Churches *sui iuris*, where provinces were established within the territorial boundaries of a patriarchal Church. *CCEO*, canon 1064, §1 states: “[t]he metropolitan tribunal, which is not distinct from the tribunal of the eparchy of the metropolitan, is the appellate tribunal from sentences of the eparchial tribunals.”

The metropolitan bishop, who is the eparchial bishop¹⁸⁹ of a particular see to which this dignity is attached and who presides over an ecclesiastical province (as well as the establishment of an eparchial tribunal), is also bound to establish a metropolitan tribunal.¹⁹⁰ This tribunal is an ordinary tribunal of appeal for the tribunals of the province of the patriarchal Church,¹⁹¹ and is composed, with due regard to the norms of *CCEO*, canons 1086-1101, and all the following norms pertaining to qualifications of the entire personnel. When a request for a judicial process is made by a member who is undergoing a dismissal procedure from a religious institute, the typicon or statutes of the religious institute will determine the tribunal of second and further instance[s].¹⁹²

3.3.5 — *Provocatio*

All Christian faithful are free to bring forth a case at any stage and in any grade of judgment before the Roman Pontiff in virtue of his primacy, for he is the supreme shepherd

¹⁸⁹ Cf. *CCEO*, cc. 134, §2, 158, §2.

¹⁹⁰ See *CCEO*, c. 133, §1, 3°.

¹⁹¹ See *CCEO*, c. 1064, §2.

¹⁹² See ABBASS, “Trials in General,” 861.

and judge.¹⁹³ The Roman Pontiff acts either personally, through tribunals of the Apostolic See or through the judges delegated by him.¹⁹⁴

Any dismissed religious member can submit a special referral (*provocatio*) to the Roman Pontiff himself,¹⁹⁵ which is similar to the recourse made against administrative decrees. This referral,¹⁹⁶ made to the Roman Pontiff, does not suspend the exercising of power by a judge who has already begun to adjudicate the case, except in the case of an appeal. For this reason, the judge can pursue judgment up to the definitive sentence, unless it is evident that the Roman Pontiff has reserved the case to himself.¹⁹⁷

Conclusion

A judicial tribunal may be constituted as a juridic person¹⁹⁸ endowed in law with the responsibility of hearing and adjudicating cases. At the same time, particularly within religious institutes, the tribunal is not necessarily to be understood as an institutional structure in the strict sense, but rather as the judicial authority constituted according to canon law by the appointment of the persons required to exercise this function. In a judicial process, the judge who holds an ecclesiastical office carries out an important role. The tasks of the judge are related to the exercise of this public office, which consists of the just application of ecclesial law in a spirit of canonical equity and mercy.¹⁹⁹ The Christian

¹⁹³ See ABBASS, "The Roman Rota and Appeals," 456; see also W.L. DANIEL, "Roman Pontiff as Supreme Judge," in *Practical Comm*, vol. 2, 1997.

¹⁹⁴ See *CCEO*, c. 1059, §1; see also ABBASS, "The Eastern Code Turns Thirty," 59.

¹⁹⁵ Cf. *CCEO*, c. 1006.

¹⁹⁶ "which represents an exceptional case and does not constitute a real appeal" (*Nuntia*, 3 (1976), 23).

¹⁹⁷ See *CCEO*, c. 1059, §2.

¹⁹⁸ Cf. *CCEO*, c. 921, §2.

¹⁹⁹ See ROSINSKI, "Mercy and Due Process in Religious Institutes," 600.

faithful, and in particular, those who have been aggrieved, can approach the judicial authority of the Church in order to initiate various forms of litigation; and subsequently, can expect an authoritative response, and a just sentence.²⁰⁰ The administration of justice must be, “perfectly proportioned to the real state of things, to the conditions of the individuals involved and of the ecclesiastical society.”²⁰¹

In the process of a judicial process, the judges, working collegially, must apply the current legal provisions of canon law and universal law, extracting from a particular case the elements of significance with respect to the specific case they are considering. In each judicial trial, a judge is entitled to make a decision freely and with great discretion.²⁰² This authority is granted to him by the legislator. However, appropriate qualifications and competencies, as well as precise adherence to procedure, are required in order to ensure the proper administration of justice. Before pronouncing judgment, the judge must possess moral certitude²⁰³ regarding the matter;²⁰⁴ as well, before the member who is under the penal process is penalized, a penal sentence or decree is required, as rightly stipulated by the *CCEO*.²⁰⁵

A religious member who has been found to be guilty of an offence against religious profession or a delict which entails dismissal from a religious institute has the right to lodge a request against the dismissal decree so that his or her case may be handled judicially.

²⁰⁰ See W.L. DANIEL, “The Publication of the Definitive Sentence,” in *StC*, 42 (2008), 393.

²⁰¹ *Nuntia*, 3 (1976), 23.

²⁰² See RENKEN, “Penal Law and Financial Malfeasance,” 30.

²⁰³ “The [moral] certainty... is necessary and sufficient for the rendering of a judgment” (PIUS XII, Allocation to the Roman Rota on Moral Certitude Necessary for a Judgement, 1 October 1942, no. 1, in *AAS*, 34 (1942), 340, English translation in WOESTMAN, *Allocutions*, 18).

²⁰⁴ Cf. *CCEO*, c. 1291, §1.

²⁰⁵ See GREEN, “Penal Law,” 99.

This chapter has clearly defined the norms, based on the *CCEO*, which are involved in the introduction of a request by a dismissed member against a decree of dismissal, regardless of whether it is of eparchial, patriarchal or pontifical right. A competent tribunal is the only tribunal acceptable – whether it is the ordinary tribunal for the patriarchal Church, the metropolitan tribunal, or the tribunal of the Roman Rota.

If the superior is endowed with the appropriate power to adjudicate his or her own subjects as determined by both canon law and by its own particular law, then a religious member who is accused of a delict and who belongs to such a religious institute, can be adjudicated in the first instance in a penal judicial trial by their own religious tribunal. If there is an appeal, the particular law will determine the appellate court responsible to hear the appeal. However, to dismiss a guilty member, the superior is to issue a decree of dismissal following norms on dismissal outlined in the *CCEO* and the particular law of their own institute.

In the case of a religious member who is accused of committing a *gravius delictum*, which is reserved to the DDF, the competent tribunal is solely the DDF, or other tribunals which include the religious institute's own tribunal, to which the DDF expressly grants prior authorization to adjudicate the case.

In establishing a tribunal as a judicial authority, a hierarch must follow the norms of canon law. If the tribunal has been granted authorization from the DDF to adjudicate its reserved cases, then the tribunal must fulfill the special norms of the DDF. Observing the obligations of the law with its many provisions is a requirement for ensuring validity.

CHAPTER FOUR: APPLICATION OF NORMS ON DISMISSAL OF RELIGIOUS MEMBER FROM BASILIAN ORDER OF SAINT JOSAPHAT

Introduction

A member of the Basilian Order of Saint Josaphat (= the Basilian Order, = the Order), according to *ROSBM*, rule 3, §1, is called to emulate God's likeness and teachings, and is sanctified by practicing the evangelical counsels of obedience, chastity and poverty, which are shown in steadfast service pledged to God and one's neighbour. He continually strives to achieve perfection in his state, and faithfully adheres to the teachings of our holy founder and spiritual helmsman of communal monastic life – Basil the Great. Saint Basil established rules for the common life, which were held in esteem by the holy hieromartyr Josaphat Kuntsevych, whose spirituality and apostolic work was primarily directed to the goal of the unity of all Christians, which provided clear direction in the creation of the Order, and by Joseph Veliamyn Rutsky, a 17th century Metropolitan of Kyiv – the reformer of monastic life in the Ukrainian Greek-Catholic Church, who organized the unification of the Basilian monasteries into one Order.¹

A member devotes himself to achieving an understanding of perfect love for service to the kingdom of God by adopting and observing the *Rules: The Basilian Order of Saint Josaphat*, which serves as a guide to fulfill his pledge to promote the mission of the Church and salvation of the world.² By dedicating himself to the service of the Order, a member

¹ See *ROSBM*, rule 9, §1.

² “Religious, by their particular form of consecration, are necessarily and deeply committed to the mission of Christ. Like Him, they are called for others: wholly turned in love to the Father and, by that very fact, entirely given to Christ's saving service of their brothers and sisters” (*CTRL*, no. 24, in *CLD*, vol. 10, 53).

demonstrates perseverance in his efforts to lead a contemplative life, to participate in the celebration of the Divine Praises, to protect and strengthen unity amongst Christians,³ to persist with vigour and constancy in further developing spiritual growth and to abide by the vows of his vocation in order to achieve the ultimate reward of eternal life in heaven (cf. Revelation 3:21).

In adherence to the norms of the *CCEO*, the proper law of the Apostolic See,⁴ as well as to the *ROSBM*, a member of the Order who commits an offense against religious profession or a delict that entails dismissal shall be dismissed from the Order. In the case of an allegation of sexual misconduct, regarding a *gravius delictum* reserved to the DDF involving a member of the Basilian Order in Canada, the norms of the guidelines protecting the minors issued by CCCB, together with the policies concerning an allegation of sexual misconduct of the Canadian Province of the Basilian Order, are to be followed. In 2022, Pope Francis shared the following in his address to the members of the general chapter of the Basilian Order:

Then one more thing I would like to say to you, lest we forget... one of the problems, we know, that exist so many times, is the problem of abuse. Please remember this well: zero tolerance on abuse of minors or incapacitated persons, zero tolerance. Please do not hide this reality. We are religious, we are priests in order to bring people to Jesus, not to “consume” people with our concupiscence. And the abuser destroys, he “consumes” the abused with his concupiscence. Zero tolerance. Do not be ashamed to report it: “He did this, he did that...” “I accompany you, you are a sinner, you are a sick person, but I have to protect others”. Please, I beg you, zero tolerance. You do not solve this with a transfer. “Ah, I’ll send him to this continent, I’ll send him to the other continent...”. No.⁵

³ See *ROSBM*, rule 3, §2.

⁴ See 2.2.2 — Proper Law of the Apostolic See.

⁵ FRANCIS, Address to the Participants in the General Chapters of the Basilian Order of Saint Josaphat, the Order of the Mother of God and the Congregation of the Mission, 14 July 2022, English translation <https://www.vatican.va/content/francesco/en/speeches/2022/july/documents/20220714-capitoligenerali.html> (12 November 2025).

This chapter is focused on the application of the norms of the *ROSBM*, which pertain to dismissal of members from the Basilian Order in Canada. It consists of five divisions, namely: Order of Dismissal from the Basilian Order, Judicial Dismissal from the Basilian Order, Response on *graviora delicta* Reserved to DDF, Effects of Dismissal from the Basilian Order and Assistance to a Member Dismissed from the Basilian Order.

4.1 — Order of Dismissal from the Basilian Order

All governing authorities are, “instituted by God” (Romans 13:1). The Code clearly indicates that superiors possess personal authority.⁶ This authority is derived from God through the Church and should be exercised with a spirit of service. Superiors in their roles as “the spiritual and organizational leader of the community, [...] must perfect himself in the love of Christ”⁷ and remember that those under their governance are children of God. Superiors, according to *CCEO*, canon 421, “are bound by a grave obligation to take care that the members committed to them conduct their lives in accord with their own [...] statutes,” are expected to encourage voluntary obedience, listen attentively, and promote cooperation for the benefit of all.⁸

The superior who has the responsibility to punish a guilty member, must according to *ROSBM*, rule 511, “to avoid throwing the offender into the abyss of despair.”⁹ The

⁶ “[A] central element in religious government is the personal authority of the superior, an authority that is ongoing and executive, carefully circumscribed in duration and exercise, and humanly limited in its possession and implementation” (MCDONOUGH, “Religious Superiors and Government,” 66).

⁷ *ROSBM*, rule 385.

⁸ Cf. MCDONOUGH, “Religious Superiors and Government,” 63.

⁹ The imposition of penalties is not only a privation of a good, but it is a positive act which may contribute to improving the offender. Before imposition of penalties, the superior may impose certain prayer, a pious pilgrimage, a special fast and spiritual retreat to encourage an offender to correct his life according to the statutes of Basilian Order. Cf. DOMINGO, “Penal Law in the Roman Catholic Church,” 168.

superior is deemed to be, according to *ROSBM*, rule 456, §1: “the authority entrusted to guide the community spiritually and organizationally and safeguard its religious spirit and unity.” He is the authority to whom the overseeing of discipline is entrusted, *ROSBM*, rule 511, and any weakening of discipline or disregarding of the law in the community must be prevented.

The major superior of the Basilian Order bears the burden of possibly dismissing one of his own members from the Order.¹⁰ In accordance with the *ROSBM*, a member can be dismissed *ipso iure*, by decree or he may be expelled from the monastery, followed by a process of dismissal. The *CCEO* provides the substantive norms which pertain to the dismissal of a member from the religious institute. The *ROSBM* following canon law also provides substantive norms on dismissal of a member from the Basilian Order. It is apparent that neither the *CCEO* nor the *ROSBM* provide the norms which comprehensively outline the proper steps of dismissal of a member from the religious institute and, subsequently, from the Basilian Order. The major superior is challenged to oversee the proper procedure, and follow the proper format in order to implement the dismissal accurately and justly. This part of the fourth chapter will outline the proper procedure¹¹ to

¹⁰ See F.J. EGAÑA, “Dimissione dall’Istituto religioso,” in C. CORRAL, V. DE PAOLIS, and G. GHIRLANDA (eds.), *Nuovo dizionario di diritto canonico*, Milan, San Paolo, 1993, 345.

¹¹ “Laws are not subject to dispensation to the extent that they determine those things which are essentially constitutive of juridic institutes or acts, nor are procedural and penal laws subject to dispensation” (*CCEO*, c. 1537).

Only the Apostolic See is competent to dispense from the procedural law through the Apostolic Signatura. Cf. SECRETARIAT OF STATE, Rescript granting the Apostolic Signatura the faculty to dispense from the procedural norms of the *CCEO*, 22 November 1995, in J. LLOBELL, “Il tribunale competente per l’appello della sentenza di nullità del matrimonio giudicata tamquam in prima instantia ex can. 1683,” in *Ius Ecclesiae*, 8 (1996), footnote 2, 689-690. The faculty was confirmed by Benedict XVI.

be followed for the dismissal of a member from the Basilian Order, and it will highlight the differences between the *ROSBM* and the *CCEO*.

4.1.1 — Particular Law of the Basilian Order

From its inception in 1617, the Basilian Order has been guided by rules based on the teachings of Saint Basil the Great,¹² which were adopted at the first general chapter held at the family estate of Metropolitan Joseph Veliamyn Rutsky, near Novhorodok, Belarus.¹³

In the year 1952, Pope Pius XII promulgated in the motu proprio *Postquam apostolicis litteris*, the new law of religious, and the general chapter adapted the *Constitutiones Ordinis Basiliani sancti Josaphat*.¹⁴

In 1966 Paul VI ordered¹⁵ that religious institutes convoke general chapters with special or extraordinary powers to attend to the revision of the constitutions and

¹² See J.V. RUTSKYJ, *Regulae communes S. Patris nostri Basilii Magni Caesareae Cappadociae Archiepiscopi*, Archivum S. Congregationis di Propaganda Fide, Congregationes particulari, vol. 29, foil. 302-306, in M. WOJNAR, *De regimine Basilianorum Ruthenorum a metropolita Josepho Velamin Rutskyj instauratorum*, 2nd ed., Analecta OSBM, Series II, Sectio I, vol. 1, Rome, Publisher PP. Basiliani, 1949, 203-218.

¹³ See P. PIDRUCHNYJ and B. PIETNOCZKO, *Capitula generalia Basilianorum ab anno 1617 ad annum 1636*, Analecta OSBM, Series II, Sectio I, vol. 55, Rome-Lviv, Misioner, 2017, 203-218.

¹⁴ See Pius XII, Apostolic Letter *Divus Basilius Magnus*, *Constitutiones Ordinis Basiliani sancti Josaphat approbantur*, in *AAS*, 47 (1955), 588-590, in *Constitutiones Ordinis Basiliani sancti Josaphat*, 7-10.

¹⁵ II. Revision of Constitutions and Typika.

12. The general laws of each Institute (Constitutions, Typika, Rules, or whatever they may be called) should comprise approximately the following elements:

a) the evangelical and theological principles concerning the religious life and its union with the Church, and some appropriate and definite expressions which “acknowledge and preserve the spirit of the Founders and all the particular goals and whole-some traditions which constitute the heritage of each Institute” (Decree *Perfectae Caritatis*, n. 2, b).

b) the juridical norms which are needed to define clearly the character, the aims, and the means of the Institute; these norms should not be multiplied beyond measure, but must always be adequate stated.

13. The union of both elements, the spiritual and the juridical, is necessary so that the principal books of the Institutes may have a firm foundation and breathe a true spirit and a vital norm; hence care should be taken not to produce a text which is only juridical or merely exhortatory.

regulations,¹⁶ to return to the spirit of its founders, adapting to the signs of the times and consistently adhering to the gospel.¹⁷ In 1969, the general chapter once again revised and adapted its Constitution in line with the decree *Perfectae caritatis*, issued by the Second Vatican Council.

The up-to-date renewal of the religious life comprises both a constant return to the sources of the whole of the Christian life and to the primitive inspiration of the institutes, and their adaptation to the changed conditions of our time. This renewal, under the impulse of the Holy Spirit and with the guidance of the Church, must be promoted in accordance with the following principles: [s]ince the final norm of the religious life is the following of Christ as it is put before us in the Gospel, this must be taken by all institutes as the supreme rule.¹⁸

Then in 1977, 1993 and 2002, the general chapter again amended the Constitution, these modifications were approved by the Apostolic See *ad experimentum*.¹⁹ The Constitutions of 1993 and 2002 were adapted to the *CCEO*.

All these Constitutions are to contain the spiritual, theological, and juridical aspects²⁰ to define the identity of the Order, and were formed into three parts titled: first part – statutes, second – rules, and third – directory. Until 2002, the understanding of the first part – the statutes, was that they contained the teachings of Saint Basil the Great, i.e., excerpts from his rules and teachings. The second part – rules, contained the legal norms of discipline, labour and the apostolate in the Basilian Order. This part of the Constitution, in

14. The fundamental code of each Institute should exclude whatever is already obsolete, or subject to change with custom of the time, or corresponds merely to local usages.

Norms which correspond to the present time, to the physical and psychic condition of the members, or to special circumstances, should be put in supplementary books, called *directories*, custom books, or some such name.

(PAUL VI, *Ecclesiae sanctae*, II, no. 12, in *AAS*, 58 (1966), 777, *CLD*, vol. 6, 286-287).

¹⁶ See N.M. FORD, “Why Religious Revised Their Constitutions,” in *RfR*, 42 (1983), 218.

¹⁷ Cf. McDONOUGH, “Religious Superiors and Government,” 67.

¹⁸ *PC*, no. 2, in *AAS*, 58 (1966), 703, *FLANNERY*, 612.

¹⁹ See *Regole: Dell’Ordine Basiliano di san Giosafat. Storia-Insegnamenti-Statuto-Appendici*, promulgated by the Superior General G. VIOMAR, OSBM, Rome, Misioner, 2018, 29-30.

²⁰ Cf. TORRES, “Ecclesiastical Approval of Constitutions,” 122.

order to be amended, required a two-thirds majority vote of those present at the general chapter. The third part – directory, contained various disciplinary norms, procedures, formulas, samples of requests, diagrams, lists of books and Church documentation. This part had to comply with canon law.

In the year 2000, the general chapter approved the work on a new revision of the Constitution, *The Statutes*, according to the *CCEO*. Moreover, the general chapter instructed that the directory had to be revised appropriately so all general legal norms were transferred from the directory to the rules (hereinafter, the statutes), but such norms as the procedure of acceptance into the Basilian Order, the activity of the province, etc., be included in the Provincial Directory. In 2004, the general chapter rejected the draft of new statutes and instructed another commission to start a new revision. These statutes were composed of two parts. The first part – rules of Saint Basil the Great (from 2018 teachings of Saint Basil the Great) and the second part – rules. The directory was removed from the statutes. In 2008, the general chapter approved the new statutes, and in 2009, the Congregation for the Eastern Churches approved this Statutes *ad experimentum*.²¹

In the year 2012, the general chapter formed a new commission for further improvement of the statutes, and in 2016, the general chapter approved the new redaction of statutes, which is contained in the *ROSBM*. In 2018, the Congregation for the Eastern Churches approbated the new statutes.²² The *ROSBM* contains the short history of the

²¹ See *Regole: Dell'Ordine Basiliano di san Giosafat*, 31.

²² “The definitive approval of the Constitutions is reserved to the competent Authority” (PAUL VI, *Ecclesiae sanctae*, II, no. 8, in *AAS*, 58 (1966), 777, *CLD*, vol. 6, 286).

In virtue of the *Ecclesiae sanctae*, only the statutes of the Basilian Order are to be approved by the Apostolic See. Whenever the general chapter would make changes to the statutes, the Order is to ask the dicastery for the Eastern Churches for the approval of the changed statutes. Cf. TORRES, “Ecclesiastical Approval of Constitutions,” 123-124.

Basilian Order, the teachings of Saint Basil the Great,²³ statutes – rules, i.e., legal norms of discipline, labour, the apostolate,²⁴ norms of various procedures, and the appendices – formulas, samples, oaths. The statutes can only be changed during the general chapter by a two-thirds majority of those present.²⁵ Even if canon law changes, the rules of the statutes related to the new norm of the *CCEO* can only be changed during the general chapter. In order to make changes to the statutes, two general chapters are required.²⁶ This rule to amend the statutes in two consecutive general chapters bears continuity from the Constitutions of 1954.²⁷ Other parts of the *ROSBM* change according to the provision of the statutes.²⁸

The *ROSBM* does not contain the directory. Each province must issue the directory of the provincial chapter, which must be approved by the superior general with the consent

²³ Every member is to arrange his life according to the statutes of the Order thus having faithfully observed the intention and determinations of the founder. Cf. *CCEO*, c. 426.

²⁴ Cf. GUTIÉRREZ, “The New Code of Canon Law and the Internal Law,” 83.

²⁵ “Amended and supplemented rules of the Statute which are approved by the General Chapter, obtain, upon consent from the Apostolic See, the status of directives of the Chapter. They become new rules of the Statute only after being approved by the next General Chapter and confirmed by the Apostolic See. Moreover, any rules that are repealed by the decision of the General Chapter, although no longer binding, lose their force definitively only after being repealed again at the next General Chapter” (*ROSBM*, rule 5, §2).

²⁶ The right and duty to exercise personal authority in governing the institute and its members within the bounds established by the chapter and in compliance with ecclesiastical law and the particular law of the institute is one of the main juridical responsibilities of superiors. Superiors do not legislate *per se*. This role is restricted to the competence of general chapters in order to avoid the possibility that the person who drafts the legislation will also be primarily in charge of carrying this legislation out and may become a victim of the practice of frequently changing the law to suit his or her personal needs. See McDONOUGH, “Juridical Deconstruction of Religious Institutes,” 312.

²⁷ See *Constitutiones Ordinis Basiliani sancti Josaphat*, rule 328, §3.

²⁸ “The spirit of the teachings of St. Basil, exemplified through selected excerpts from his works, is seen in the “Teachings of our Father Saint Basil the Great”, as confirmed by the General Chapter of the Order” (*ROSBM*, rule 9, §2).

“The Statute has appendices, which are not rules. They are established and amended by an absolute majority of votes at only one General Chapter and are promulgated by the Superior General” (*ROSBM*, rule 7).

of his council.²⁹ The provincial directory contains norms regarding the celebration of liturgies, pious practices, the relationship to civil law, ecclesiastical discipline, proper steps on stages of formation, canonical visitation of the houses, etc.

In the Basilian Order, there have been various approaches in the history of the Order's legislation. These approaches obviously corresponded to the needs of the time and the requirements of consecrated life.³⁰ The legislation of the Order comes in the spirit of the Eastern Churches, which, in itself, is a unique approach to decision-making and ecclesiastical law exercised in the synodal manner.³¹ To make a decision, the Order according to *ROSBM*, rule 326 calls the general chapter, which is a gathering of members from all provinces where each participant represents not only his province, but the entire Basilian Order;³² the essence of the general chapter is a true illustration of the Order's unity in love.³³

²⁹ "Each Province of the Order has, in addition to the Statute, its own Directory containing the rules common to all the religious Houses of the Province, which is issued by the Provincial Chapter and approved by the Superior General with the consent of his Council" (*ROSBM*, rule 303, §1).

³⁰ Cf. F.G. MORRISEY, "The Spirit of the Proposed New Law for Institutes of Consecrated Life," in *StC*, 9 (1975), 81; see KOCHUPURACKAL, *Religious Authority and Power*, 108.

³¹ "Church is nothing other than the "journeying together" of God's flock along the paths of history towards the encounter with Christ the Lord" (FRANCIS, Ceremony Commemorating the 50th Anniversary of the Institution of the Synod of Bishops, 17 October 2015, in *AAS*, 107 (2015), 1142, English translation https://www.vatican.va/content/francesco/en/speeches/2015/october/documents/papa-francesco_20151017_50-anniversario-sinodo.html (12 November 2025).

³² "Chapters and councils should faithfully discharge the role committed to them in government and, each of them in its own way, should give expression to the involvement and the concern of all the members of the community for the good of the whole" (*PC*, no. 14, in *AAS*, 58 (1966), 709, *FLANNERY*, 620).

³³ "This general Chapter has the right to change, by way of experiment, certain norms of the Constitutions, or among Orientals the norms of the Typica, provided the purpose, nature, and character of the Institute are preserved. Experiments contrary to the common law, to be tried prudently, will be freely permitted by the Holy See as occasions arise" (PAUL VI, *Ecclesiae sanctae*, II, no. 6, in *AAS*, 58 (1966), 776, *CLD*, vol. 6, 285).

This chapter will demonstrate whether or not the current legislation of the Order is reasonable, or, if in the future the general chapter will once again have to consider and implement changes to the statutes:

it is for the competent authorities, alone, and especially for general chapters, to establish the norms for appropriate renewal and to legislate for it, as also to provide for sufficient prudent experimentation. The approval of the Holy See and of the local ordinaries must be sought when the law requires this. Superiors, however, in matters which concern the destiny of the entire institute, should find appropriate means of consulting their subjects, and should listen to them. [...] All should remember, however, that hope for renewal lies more in greater diligence in the observance of the rule and constitutions than in multiplication of laws.³⁴

It is important to understand there are clearly-defined rules that regulate life and discipline in the Order, which were approved by the highest ecclesiastical authority.³⁵ These rules help both superiors and members to resolve various issues, problems or difficulties in a timely, fair and equitable manner, rather than applying solutions of a subjective nature.

4.1.2 — Steps of the Major Superiors for an *ipso iure* Dismissal

ROSBM, rule 528 states “[t]hat Religious must be held as dismissed from the Order by the law itself, that is, without any decision on the part of the Superiors [...]” When utilizing the term *superiors*, it may be understood that *ROSBM*, rule 528 has indicated that any superior of the Order is competent to serve in the process of an *ipso iure* dismissal. However, by continuing on to *ROSBM*, rule 529, §1, the regulation highlights that the only competent superior in *ipso iure* dismissal is the major superior.³⁶

³⁴ *PC*, no. 4, in *AAS*, 58 (1966), 704, *FLANNERY*, 613-614.

³⁵ Cf. GUTIÉRREZ, “The New Code of Canon Law and the Internal Law,” 83-84.

³⁶ Cf. ABBASS, *The Consecrated Life*, 250.

The law requires superior, namely, competent superior, regardless of their juridic status, to proceed in legal confirmation of an *ipso iure* dismissal. Cf. PUJOL, *La vita religiosa orientale*, 378.

4.1.2.1 — Provincial Superior and His Initial Actions

The major superior is to follow the established procedure for the juridical formalization of the case of an *ipso iure* dismissal, as it is not deemed to be an ordinary process of dismissal since the member has already been dismissed *ipso iure* from the Order by committing one of the delicts, i.e., delict against faith or delict against vow of chastity outlined in *CCEO*, canon 497.³⁷

ROSBM, rule 529 explicitly frames the essential elements to be undertaken in the case of an *ipso iure* dismissal:

§1. In the case of dismissal by the law itself, the Provincial Superior collects the official proofs (marriage certificate, other relevant documents), or the sworn written declarations of reliable persons or of the Religious himself; consults with his Council, determining with moral certainty the presence of proof; and, without delay, issues a declaration regarding this fact to juridically confirm the dismissal. He immediately informs the Superior General of the situation and forwards copies of the acts to him, and the Superior General informs the Apostolic See.

§2. As the result of dismissal by the law itself, the Religious automatically loses membership in the Basilian Order; however, he remains bound by his religious profession, from which he can be released only by the Apostolic See.

Having knowledge of the circumstances of a case, deemed true, in making an accusation against a member of the Basilian Order in Canada of a delict which entails an *ipso iure* dismissal, the preliminary inquiry can be initiated by the provincial superior himself, or he may delegate another suitable person³⁸ who has adequate experience relating to the matter which is the subject of the investigation.³⁹ Moreover, the provincial superior

³⁷ The ecclesiastical law does not assign a penal nature for the delicts mentioned in *CCEO*, canon 497. According to *CCEO*, canon 1402, §3 perpetual penalties cannot be declared by decree. The *ipso iure* dismissal would be a penalty of that nature. It follows from *CCEO*, canon 1402, §3 that the canonical penalty must be carried out through a judicial penal process, and that it is not acceptable to do so through an administrative process. In contrast, the procedure provided for in *ROSBM*, rule 529, §1 (cf. *CCEO*, c. 497, §2) does not even remotely resemble a judicial process, perhaps not even an administrative penal process, considering its regulation in *CCEO*, canon 1486. Cf. SÁNCHEZ-GIRÓN RENEDEO, “La expulsión de un instituto religioso,” 706-707.

³⁸ Cf. *CCEO*, c. 1468.

³⁹ See D. ASTIGUETA, “L’investigazione previa: alcune problematiche,” in *Per*, 98 (2009), 207.

shall appoint a notary whose duty is to authenticate the evidence of a presumed committed delict, collected during the inquiry.⁴⁰ Care must be taken lest the *bonam famam* of any individual, which is safeguarded by the natural law,⁴¹ be damaged by the investigation.⁴² All actions taken by the provincial superior must be documented in decrees (i.e., an initiation of the preliminary investigation which may include the appointment of a suitable person together with a notary, gathered proofs, a conclusion of the preliminary investigation).

4.1.2.2 — Consultation of the Provincial Council and Decision

After proofs are gathered, the provincial superior must consult with his council.⁴³ He is obligated to present the evidence to his councillors and hear their opinions.⁴⁴ The councillors then express their opinions. However, they may disagree with the evidence presented. During the inquiry, ecclesiastical law excludes the requirement that the provincial superior is to issue warnings to an accused member.⁴⁵

⁴⁰ Cf. *CCEO*, c. 1101.

⁴¹ “[...] man has a natural right to be respected. He has a right to his good name” (JOHN XXIII, Encyclical Letter on Establishing Universal Peace in Truth, Justice, Charity, and Liberty *Pacem in terris*, 11 April 1963, no. 12, in *AAS*, 55 (1963), 260, English translation in *The Pope Speaks*, 9 (1963), 15-16).

⁴² Cf. *CCEO*, c. 1468, §2; *CCEO*, canon 23 enforces the obligation of preserving the fundamental right to privacy and a good reputation; see MUROPA, “Personnel Files,” 84.

⁴³ Cf. *Nuntia*, 24-25 (1987), 93.

⁴⁴ Cf. *CCEO*, c. 934, §1.

“The obligation of seeking counsel is one legal attempt to balance the personal executive authority of the superior by other persons” (MCDONOUGH, “Religious Superiors and Government,” 66).

⁴⁵ See *ROSBM*, 533, §1, 2°; cf. *CCEO*, c. 500, §2, 2°.

In cases of the delict of a marriage celebrated,⁴⁶ or attempted⁴⁷ even civilly, the provincial superior is to present all relevant information gathered from the available documentation.⁴⁸ In a case of the delict of the abandonment of faith,⁴⁹ which requires a person to “‘throw away’ the faith (*abicere*) rather than simply to ‘fall away’, or ‘cease’ from it,”⁵⁰ is not a simple matter.⁵¹ The provincial superior is to present documentation which provides proof of the abandonment of the member’s Catholic faith, e.g., hard copies of writings⁵² which include statements that are directed against the teachings of the Catholic Church.⁵³ The gathering of evidence is required in case a person, in the future, may wish for his life to return to an orderly manner, and, subsequently, may return to being in communion with the Church.⁵⁴ Besides dismissal from the Order, a member can incur a canonical penalty, e.g., a major excommunication.⁵⁵

⁴⁶ “A marriage entered into by a religious in temporary vows before obtaining a dispensation, since temporary profession does not constitute a diriment impediment to marriage” (F.G. MORRISSEY, Commentary on c. 694, in *Exegetical Comm*, vol. 2/2, 1862).

⁴⁷ Cf. *CCEO*, cc. 789, §1, 3°, 804.

⁴⁸ In a forbidden marriage: a marriage certificate, or other relevant documents which confirm the marriage, e.g., an unaltered authentic video made during the marriage ceremony; a sworn written declaration of reliable persons such as relatives or friends who were present at the marriage; or even a member himself provides a document which attests a marriage ceremony.

⁴⁹ See *CCEO*, c. 598.

⁵⁰ JAEGER, “Observations on Religious in the Oriental Code,” 178.

⁵¹ See HOLLAND, “Chapter VI Separation,” 864.

⁵² Cf. GIROTTI and KHOURY, Commentary on c. 498, 409; cf. also HOLLAND, “Canonical Dismissal,” 63-64.

⁵³ *CCEO*, canon 497, §1, 1° in the determining the delict, uses word *publice*. The requirement of publicity of the rejection of Catholic faith expressed by the adverb *publice*, denotes something far more precise, far more determined, and more decisive. See JAEGER, “Alcuni appunti sui religiosi nel *Codex canonum Ecclesiarum orientalium*,” 187.

The hidden delict of the abandonment of faith (repudiation of faith, denying some truth to be believed by divine and Catholic faith, heresy or schism) constitutes a cause for the process of dismissal. See GIROTTI and KHOURY, Commentary on c. 498, 409.

⁵⁴ See S. HOLLAND, “Policies when a Member Leaves the Religious Institute,” in *Informationes SCRIS*, 26 (2000), 135.

⁵⁵ Cf. *CCEO*, c. 1436, §1.

Based on the evidence gathered during the investigation, and after reaching moral certitude,⁵⁶ the provincial superior is to issue a declaration concerning a delict committed by a member for the legal confirmation of an *ipso iure* dismissal.⁵⁷ This declaration must include the following components: (1) the reasons for dismissal, (2) the declaration of the fact of dismissal in virtue of *CCEO*, canon 497, §1, and (3) the declaration must be signed by the provincial superior and authenticated by the notary, i.e., the provincial secretary, who is a member of the provincial curia.⁵⁸

4.1.2.3 — Notification of the Apostolic See

After issuing the declaration, the provincial superior is to promptly inform the superior general that the member is dismissed *ipso iure*. It is the responsibility of the notary to send all copies of the acts to the superior general by registered mail.⁵⁹ The original copy of the acts is to remain in the provincial curia. The superior general, or his delegate, is to send all acts of the process for the *ipso iure* declaration to the Dicastery for the Eastern Churches informing them of the *ipso iure* dismissal.⁶⁰ No confirmation is required for an *ipso iure* dismissal. The dismissed *ipso iure* member automatically loses membership in

⁵⁶ See *CCEO*, c. 1291, §1.

⁵⁷ Cf. M. JOYCE, “Seminar. Partings: Separation of Members from Religious Institutes, Secular Institutes, and Societies of Apostolic Life,” in *CLSA Proceedings*, 78 (2016), 258-259.

⁵⁸ Cf. HOLLAND, “Chapter VI Separation,” 865.

⁵⁹ Holland notes: “The religious must be informed of the fact of his/her dismissal, and the document placed in the individual’s file. If a provincial or other major superior acts, the general superior should likewise be informed. Although it is not written in the canons, the parish of Baptism should be informed, at least in the case of a perpetually professed member. This is because the baptismal register is expected to contain all that establishes or changes the canonical status of the person (CIC c. 535 §2; *CCEO* c. 296 §2)” (HOLLAND, “Canonical Dismissal,” 64).

⁶⁰ A major superior, when following the prescribed steps of the law, can form some legal clarification that a guilty member chose a different life style, whose new mode of life, even if it does not contradict the substance of the Catholic faith, nevertheless affects those elements of life in the Order’s form of conduct that alter certain characteristics that the Church considers requisite for being a member of the Order. Cf. GIROTTI and KHOURY, Commentary on c. 498, 409.

the Order; however, he is not freed from religious profession and is to seek a dispensation from religious profession.⁶¹

4.1.3 — Major Superiors' Steps on Dismissal in an Administrative Process

A guilty member may be dismissed from the Order by the major superior in an administrative process. *ROSBM*, rule 531, §1 outlines the grounds by which a member is subject to a dismissal by decree:

A Religious can be dismissed by decree if he is guilty of:

1. continuous disregard of the obligations of the consecrated life;
2. obstinate disobedience of the directives of Superiors on important matters;
3. obstinate support or dissemination of religious doctrines which contradict the teachings of the Church;
4. public adhesion to ideologies tainted by materialism, atheism, religious fundamentalism, extremism or other;
5. unlawful absence from the community for more than two weeks;
6. morally scandalous conduct;
7. illicit pursuit of a manner of life or spirituality contrary to, or deviating from, the consecrated life and spirituality of our Order;
8. serious negligence or grave abuse of power in the exercise of his office;
9. other serious violations recognized as such by the Magisterium of the Church.

The *CCEO* does not list grounds for which a guilty member may be dismissed. The Eastern Code describes unlawful absence⁶² for which a member may be dismissed from the Order. *ROSBM*, rule 531, §1 and took as the source of all other grounds the *CIC*, canon 696, §1. These grounds of dismissal appeared for the first time in the *Statute of the Basilian*

⁶¹ Cf. *CCEO*, c. 502; see *Nuntia*, 16 (1983), 70; see also ABBASS, *The Consecrated Life*, 2008, 287.

⁶² Cf. *CCEO*, c. 550.

Order of Saint Josaphat, approbated in 2010.⁶³ These grounds are indicative for the justification of dismissal of a member from the Order.⁶⁴ “The efforts of superiors are constantly to be directed at the amendment of the guilty.”⁶⁵

ROSBM, rule 513, §2 addresses the manner of conduct expected of an immediate superior upon learning of the news of an accusation lodged against a member subject to him:

When the Superior learns of a fault by a Religious, before admonishing him, he is to carefully check the veracity of the accusation and listen objectively to the accused, having the good of that Religious as his sole purpose.

⁶³ Cf. *Statuto dell’Ordine Basiliano di San Giosafat*, promulgated by the Superior General B. KOUBYCH, OSBM, Zhovkva, Misioner, 2010, rule 355, §1.

⁶⁴ “Continuous disregard of the obligations of the consecrated life” and “obstinate disobedience of the directives of Superiors on important matters” are two examples of grounds that are used as grounds for dismissal when a member becomes immersed for an extended or nearly permanent period of time and clearly deviates from what every member of the Basilian Order should be and live. A member who just does not fit into the consecrated way of life would fall into this category. Therefore, in a dismissal procedure, the major superiors are dealing with a measure that allows them put things as they seem to be best, i.e., dismissing from the Order a person who obviously does not have a vocation to consecrated life, rather than a legitimate punishment, sanction, or penalty. Cf. SÁNCHEZ-GIRÓN RENEDO, “La expulsión de un instituto religioso,” 723.

Gallen states that the general rules regarding the sufficiency of the reasons for dismissal are as follows: the member lacks the general aptitude for the consecrated life or the special aptitude required for the spiritual life or works of the particular institute; the institute will suffer a notable harm or serious inconvenience in keeping him; there is no hope that the member will be able to conform his life in a creditable or praiseworthy manner to the demands of the institute; or it is in the best interests of the institute to not retain him.

On the part of a member, there are specific sufficient reasons for dismissal, which can be attributed to intellectual and moral deficiencies. The primary reason for dismissal is often moral defects. These include a deficiency in the appropriate consecrated spirit, i.e., a member appears to be entirely lacking in supernatural motivations and tends to act almost exclusively on purely natural impulses. He lacks love, commitment, and devotion to the consecrated life and its responsibilities. His offenses stem from a pattern of habitual negligence, laziness, fatigue, perversion, and willfulness, rather than from unintentional weakness and infirmity. He demonstrates minimal concern or effort towards personal sanctification. He consistently disobeys the rules, traditions, and practices of the institute, even in matters that are not particularly grave. He struggles to comply with superiors regarding issues that are not explicitly directed. He frequently neglects, executes carelessly, or assigns little importance to religious practices. Furthermore, he exhibits a lack of obedience, poverty, and charity, and displays anger while being disturbed by the peace. Cf. GALLEN, “The Proposed Canons on the Consecrated Life Explained: IV,” 895-896.

⁶⁵ *ROSBM*, rule 531, §2.

When the member consistently and obstinately continues to violate the *ROSBM*, which constitute ground for dismissal, the immediate superior, by various means, must endeavour to bring the religious back to the right track of living a consecrated life.⁶⁶

ROSBM, rule 516, §1 prescribes that:

If the admonitions and penances imposed by the immediate Superior prove insufficient to correct the delict, the Provincial Superior or the Superior General, each within the limits of his competence, has the duty, through a penal process or an extra-judicial decree, to impose disciplinary sanctions, in accordance with the customs of our Order and the norms of common law.

If there is indication that dismissal is inevitable, the provincial superior, before beginning the process of dismissal of a member, “can propose to him a peaceful resolution of the problem through voluntary departure from the Order.”⁶⁷

4.1.3.1 — Dismissal of Religious with Perpetual Profession

In order to dismiss a member with perpetual profession, the superior general must bear moral certitude that no means exist within the Basilian Order of reforming the member. The prescripts of *CCEO*, canon 500, must be followed carefully.⁶⁸

4.1.3.1.1 — Checking the Conditions

For the decision of dismissal of a member with perpetual profession from the Order to be considered valid, *ROSBM*, rule 533, §2, 1^o⁶⁹ mandates that all four requirements

⁶⁶ Cf. *ROSBM*, rule 464, §1.

⁶⁷ *ROSBM*, rule 531, §2.

⁶⁸ The administrative nature of this entire procedure would support the idea that neither *CIC*, canon 699 or *CCEO*, canons 500 and 553 do not treat this expulsion as a canonical penalty. Moreover, even as an administrative process, the provisions for dismissal in these canons differ from what the canon law states regarding the administrative penal process respectively in *CIC*, canon 1720 and *CCEO*, canon 1486. Cf. SÁNCHEZ-GIRÓN RENEDO, “La expulsión de un instituto religioso,” 712.

⁶⁹ *ROSBM*, rule 533, §2 refers to the dismissal procedure to be followed by the immediate major superior of an accused member, with *CCEO*, canons 500, §1 and 553 applying regarding the necessary intervention of the superior general with his council.

prescribed by *CCEO*, canon 500, §2, 1° be present.⁷⁰ The law demands that causes are deemed grave⁷¹ and culpable,⁷² “the law or precept was violated through culpable ignorance of the law or neglect of one’s legal responsibilities,”⁷³ for the religious had acted consciously and freely.⁷⁴ Moreover, the law requires that the member does demonstrate a, “lack of reform,” which can be compared to, “sufficient proof of incorrigibility.”⁷⁵ Finally, the causes must be proven juridically. In the examination of a case of dismissal, it is taken into account the presence of qualifying words such as, continuous, obstinate, pursuit, negligent, grave, culpable.⁷⁶ At each stage of the process, these aspects are examined,⁷⁷ and there must be evidence, which, according to the law, is such that it leads to the certainty that a member is guilty and culpable.⁷⁸

ROSBM, rule 533, §2, 2°-3° presumes that, before starting the process of dismissal from the Order, at least two canonical warnings⁷⁹ with formal threats of dismissal are to be

⁷⁰ See ABBASS, *The Consecrated Life*, 272.

⁷¹ The adjective *gravis* does not mean that reasons are full and perfect in its malice. The reasons are grave when they show that the gravity is undoubtedly from a moral point of view. The act committed by the religious becomes incompatible with the essential elements of the religious vocation. The religious has knowledge, capacity for critical evaluation, internal freedom. The act committed was serious in the matter toward the consecrated life. The diligence customarily employed by a prudent person in serious matters was completely absent. See PAOLIS, *La vita consacrata nella Chiesa*, 585; see also CALABRESE, *Diritto penale canonico*, 49-50.

⁷² *Culpa* is the violation of the law or precept by the omission of due diligence, or “criminal negligence.” See CALABRESE, *Diritto penale canonico*, 43-50.

⁷³ J. MARTIN, Commentary on c. 1321, §1, in *CLSGBI Comm*, 754.

⁷⁴ See A. CALABRESE, *Istituti di vita consacrata e società di vita apostolica*, Vatican City, Libreria editrice Vaticana, 2011, 314-315.

⁷⁵ ABBASS, *The Consecrated Life*, 271; cf. *CIC*, c. 697, 3°.

⁷⁶ See *ROSBM*, rule 531, §1; see HOLLAND, “Chapter VI Separation,” 867.

⁷⁷ The dismissal process is started by initial inquiries. The provincial superior does not act alone. He is to hear his councillors in order to decide whether to start the process or not. Cf. HOLLAND, “Canonical Dismissal,” 69.

⁷⁸ See PAOLIS, *La vita consacrata nella Chiesa*, 586.

⁷⁹ The wording in issuing the canonical warnings can be: “Failure to observe this order will constitute cause for dismissal from the Basilian Order of Saint Josaphat.”

issued by the provincial superior,⁸⁰ in order to encourage a member to return to living in an appropriate manner for consecrated life.⁸¹ The requirement of a prior canonical warning is prescribed by ecclesiastical law in that a member “desist from the delict,”⁸² not for penalties.⁸³ These canonical warnings are not issued for validity of the process of dismissal, because the nature of some delicts or actions may preclude such warnings, which constitute a rare exception.⁸⁴ Each time canonical warnings are issued, the superior must clearly express the causes of dismissal to the accused member in writing,⁸⁵ and, subsequently, who will then have full opportunity to defend himself.⁸⁶

If the accused member is absent or untraceable, the warnings can be sent to the last known place of residence by registered mail, or to the family home with a covering letter requesting that the existence of the letter or the letter itself be forwarded to the member. A public directive (edict) may be sent to the house where the religious was last assigned,⁸⁷ but this is of little use if the whereabouts of the member are unknown.⁸⁸

⁸⁰ “In grave cases, the competent Superior, with the consent of his Council, can: Issue a canonical warning” (*ROSBM*, rule 518, §1, 3^o); see ABBASS, *The Consecrated Life*, 274.

⁸¹ Cf. *ROSBM*, rule 533, §2, 2^o; see HOLLAND, “Chapter VI Separation,” 867.

⁸² *CCEO*, c. 1407, §§1-2.

⁸³ Cf. SÁNCHEZ-GIRÓN RENEDO, “La expulsión de un instituto religioso,” 723-724.

⁸⁴ See ABBASS, *The Consecrated Life*, 273.

⁸⁵ These warnings, which are canonical in nature, or formal threats of dismissal, must be recorded in an external forum. See GIROTTI and KHOURY, Commentary on c. 498, 412.

The two canonical warnings are to be given to offender in the presence of two witnesses, who are to attest that they witnessed the giving of the canonical warnings. The Order retains the copy of the canonical warnings. Cf. GALLEN, “The Proposed Canons on the Consecrated Life Explained: IV,” 898.

⁸⁶ See J. ABBASS, “Dismissal of Members in Perpetual Vows,” in *Practical Comm*, vol. 1, 959.

⁸⁷ See HOLLAND, “Canonical Dismissal,” 71.

⁸⁸ Cf. *CCEO*, c. 1192; see F.J. EGAÑA, “Come devono essere fatte le ammonizioni se il religioso risulta irreperibile,” in *Vita consacrata*, 28 (1992), 284-286.

ROSBM, rule 533, §2, 4° outlines that when the canonical warnings sent are deemed to be in vain, and the period of three weeks of useful time has elapsed after the last warning, the provincial superior may proceed to the stage of dismissal of the member from the Order.

4.1.3.1.2 — Actions of the Provincial Superior

To continue the process of dismissal, *ROSBM*, rule 533, §3 stipulates:

The Provincial Superior gathers all the acts and documents, attaching the written responses of the Religious and the opinion of his entire Council, and forwards everything to the Superior General, who issues the decree.

The provincial superior, after hearing the opinions of his councillors, concludes: first, that sufficient proof of incorrigibility of a member in a grave matter exists,⁸⁹ second, that details of defence for the member are insufficient; and that ultimately no evidence of correction of the accused member exists. Therefore, the provincial superior can transmit to the superior general all details of the case (e.g., the proofs of the case, the replies of the accused member, the opinion of his provincial council and other documents, i.e., curriculum vitae: family background, studies, entrance into the Order, assignments, gathered during the process of investigation),⁹⁰ signed by him and authenticated by a notary.⁹¹

4.1.3.1.3 — Rejection of Dismissal

After the superior general has received all files of the case, he is to decide whether to accept the files and continue the process until the final decree of dismissal, or to reject the

⁸⁹ See RIBEIRO, “The Dismissal of Religious Relatives for the Illegitimate Absence of the Religious House after motu proprio *Communis Vita* (Pars II),” 57-59.

⁹⁰ Cf. E. WILLIAMSON, Commentary on c. 697, in *CLSGBI Comm*, 392.

⁹¹ Cf. *CCEO*, c. 1101; see HOLLAND, “Canonical Dismissal,” 72.

case of dismissal. *CCEO*, canon 1517 obliges that the superior general is to seek out the necessary information and proofs, consult his councillors, and if there is no danger of public or private harm,⁹² to disclose to the parties (the provincial superior and to the accused member) the necessary information, which means there is to be a brief discussion,⁹³ to present the arguments from both sides of the matter, even if necessary to hear accused member. The superior general may come to the conclusion: (1) there is not enough evidence or even there is no evidence of the guilt of a member, (2) the accused member did not have opportunity to fully defend himself in the investigation, or (3) the procedure has not been done according to the norms of canon law and the statutes of the Order. The superior general, by decree, rejects the case of dismissal of a member from the Order as devoid of foundation.

As stated in *CCEO*, canon 1519, when the superior general issues a decree rejecting a dismissal case, he is to consider and strive for the most effective means to promote the salvation of souls and the common good, strictly adhering to canon law, legitimate customs, justice, and equity. The decree of rejection of the case is to be motivated.⁹⁴

⁹² The potential harm can be public, for instance, when a party has a recognized intention or tendency to disclose the information in an untimely or sensational manner to the media or a specific community. Alternatively, the harm may be private, as in situations where the information could be utilized to discredit or assault a witness or another private individual. Regardless of the context, given that non-disclosure constitutes a restriction of the right to information that serves as the foundation for the eventual decree, the authority is required to adopt a strict interpretation of *danger of harm* (cf. *CCEO*, c. 1500). See W.L. DANIEL, "Preparation of the Decree," in *Practical Comm*, vol. 2, 2735.

⁹³ Cf. DANIEL, "Preparation of the Decree," in *Practical Comm*, vol. 2, 2733.

⁹⁴ Decree of rejection issued by the superior general is expected to adhere to established procedural and substantive norms. *CCEO*, canon 1519, §2 states that decree is to be motivated, that is, it should clearly state the reasoning or justification behind the decision.

The scenario can arise that the decree of rejection is not motivated. The decree is juridically defective, though not invalid. The provincial superior is to lodge a recourse to the higher authority, which is the dicastery for the Eastern Churches, to revoke the superior general decree. The provincial superior follows *CCEO*, canons 996-1006. The first legitimate step before placing a recourse to the dicastery, according to *CCEO*, canon 999, §1, the provincial superior is to seek in writing the revocation or emendation (*remonstratio* is to

be sign with all other formalities according to canon law) own decree of the superior general within ten days from legal notice of the decree (see *CCEO*, cc. 1126, 1520, 1546). *CCEO*, canon 999, §1 is not specified whether this is a useful time (cf. *CCEO*, c. 1544, §2). Grocholewski outlines that it seems appropriate to interpret this brief and peremptory time limit as useful. Moreover, the *remonstratio ipso iure* suspends the execution of the decree (cf. *CCEO*, c. 1000, §1), i.e., a member still remains under the process of dismissal with all the consequences. The *remonstratio* serves as a further means of avoiding the recourse, giving the superior general the opportunity to reconsider the matter, discuss it again with the provincial superior, and, consequently, resolve it. See Z. GROCHOLEWSKI, Commentary on c. 999, in PINTO, *Commento CCEO*, 838.

The *remonstratio* is to contain legitimate interest in the decree and suggest a fair resolution to the complaint. Moreover, in the *remonstration*, the provincial superior is to declare in beforehand the intention to lodge hierarchical recourse against the superior general decree if the request for revocation or emendation is rejected or ignored. Cf. T.J. CAVANAUGH, “*Remonstratio*,” in *Practical Comm*, vol. 2, 1878.

Note: even *CCEO*, canon 999, §1 does not make reference, the *remonstratio* is not foreseen in the case of hierarchical recourse against the dismissal of a monk, of a member of a religious order or congregation which is going according *CCEO*, canons 501, §2, 553. See GROCHOLEWSKI, Commentary on c. 999, 838.

Following the provincial superior’s request for the revocation or amendment of the decree issued by the superior general, the provincial superior is to encounter various scenarios in which he may either file a recourse or refrain from doing so to the higher authority. The decision hinges on the response provided by the superior general. *CCEO*, canon 1001 envisages, firstly, the superior general issues a new decree and dismisses the *remonstration*. The fifteen-day period (canon does not specify whether this is useful or continuous time, in this regard, what is observed in *CCEO*, canon 999, applies here) commences from the day the provincial superior is informed of that new decree. Secondly, the superior general issues a new decree amending the original decree, that is, the superior general adds motivation to the decree highlighting that he does not find reasons for the dismissal of a member. This amended decree does not satisfy the provincial superior because in the acts of the investigation there is clear evidence of a guilt of member following the dismissal, i.e., the provincial reached the moral certitude. The fifteen-day period commences from the day on which the amended decree is communicated to the provincial superior. Finally, the *remonstratio* received no response from the superior general, that is, the *remonstratio* is rejected, and subsequently, the fifteen-day period commences from the thirtieth day after the superior general received the *remonstratio*. See T.J. CAVANAUGH, “Time Limit for Lodging Recourse,” in *Practical Comm*, vol. 2, 1882; see also Z. GROCHOLEWSKI, Commentary on c. 1001, in PINTO, *Commento CCEO*, 840.

According *CCEO*, canon 1518, a period of ninety days is permitted for the issuance of a decree: an initial duration of sixty days following the request for a decree, after which the petitioner is required to submit a second written request. Only after additional thirty days of administrative inaction can the petitioner proceed to a higher authority. See CAVANAUGH, “Time Limit for Lodging Recourse,” 1882.

The thirty days granted to the superior general is a notable reduction of the period that is normally permitted by *CCEO*, canon 1518. The reasoning behind this shortened limit in *CCEO*, canon 1001, §2, 1^o appears to be that the original sixty days are designated to enable the authority (the superior general) to perform the necessary information-gathering, consultation, and discussions mandated by *CCEO*, canon 1517 before a decree is issued. In the case being examined, it is assumed that all these measures would have already been completed prior to the issuance of the contested original decree. See *ibid*, 1882.

The other scenario can arise when the superior general issues a decree which is motivated, but is not satisfactory to the provincial superior. The provincial superior gathered all evidence of guilt of a member, and reached a moral certitude. The superior general does not want to move forward on dismissal of a member. The provincial superior is to follow the same steps as stated above, i.e., before lodging a hierarchical recourse, he is to lodge a *remonstration*. Moreover, within the hierarchical recourse to the dicastery for the Eastern Churches, even if the prescribed time-limits have not been adhere to, a dicastery may regard the recourse as a communication of a concern and (*motu proprio*) render a decision. Cf. C.J. SCICLUNA, “Recourse against Singular or Particular Administrative Acts of the Diocesan Bishop: Request for Revocation or Amendment, Hierarchical Recourse to the Holy See, Procedure Before the Apostolic Signatura,” in *CLSGBI Proceedings*, April 2002, 47-48.

4.1.3.1.4 — Decree of Dismissal

ROSBM, rule 533, §1 states:

The dismissal of a perpetually professed Religious is within the competence of the Superior General with the consent of his Council. The vote on this matter must be secret.

A member who is in the process of undergoing dismissal is restricted in the act of exercising his rights.⁹⁵ According to *ROSBM*, rule 275, §3, a member loses the right of voice, both active and passive. *CCEO*, canon 1500 prescribes that a strict interpretation of canons for rendering a dismissal must be respected and implemented for the decision to be considered valid.

The superior general convenes his council and provides his councillors with all necessary information pertaining to the process of dismissal of a member.⁹⁶ Together, they, “evaluate all acts presented, weighing up the evidence, the arguments and the replies of the accused.”⁹⁷ To reach a proper decision, the superior general and general councillors are to be, “fully informed of the case. [...] once the decision is made, it is not longer an option whether or not to proceed to the decree of dismissal.”⁹⁸ In order to validly decide on the

The dicastery may revoke the decree of the superior general, however, this does not necessarily mean that the issue is resolved. Instead, acknowledging that the dicastery may not be fully informed of all local circumstances, it is left to the superior general to address the matter, albeit in a different manner – one that is distinct from what has been deemed unjust or inappropriate. If the appropriate dicastery upholds a decree of the superior general, the provincial superior still retains the option to pursue further contentious-administrative recourse to the Second Section of the Apostolic Signatura. The Apostolic Signatura instructs these recourses with its own established procedural norms. See BENEDICT XVI, Apostolic Letter *motu proprio lex propria Supremi Tribunalis Signaturae Apostolicae Antiqua ordinatione*, 21 June 2008, in *AAS*, 100 (2008), 513-538, English translation in W.L. DANIEL, “Proper Law of the Supreme Tribunal of the Apostolic Signatura,” in *J*, 75 (2015), 619-657.

⁹⁵ See J.M. HUELS, “Strict Interpretation,” in *Practical Comm*, vol. 2, 2691.

⁹⁶ Cf. *ROSBM*, rule 394, §2.

⁹⁷ E. WILLIAMSON, Commentary on c. 699, §1, in *CLSGBI Comm*, 393.

⁹⁸ HOLLAND, “Canonical Dismissal,” 72.

dismissal of a member with perpetual vows from the Order, the councillors are to collegially give their judgment according to their individual conscience.⁹⁹

The council, for validity, must consist of at least five members, including the superior general.¹⁰⁰ If the number of ordinary councillors is insufficient or if they are absent, the superior general can call upon other members from the Order,¹⁰¹ in accordance with the norm of *CCEO*, canon 500, §1 and *ROSBM*, rule 394, §3:

If, owing to a lawful impediment, one of the Councillors is unable to take part in the meetings of the Council for a period longer than one week, and if meanwhile an urgent need arises to convoke the entire Council, the Superior with the consent of the other Councillors names in the absent Councillor's place, for this meeting only, another Religious, who then participates in the meeting as a Councillor by full title.

The praxis in the Order, as it pertains to an insufficient number of councillors, is that the superior general can summon a member who was elected as a substitute councillor. Alternatively, he may call upon another suitable member with a degree in canon law.¹⁰² If the case is one that is lodged against a councillor, the superior general must replace him with another member of the Order.¹⁰³ If a superior general is accused, the case is solely considered by the Apostolic See.¹⁰⁴

The process of voting on a dismissal must be carried out secretly, and the subsequent decree should never state that the vote was *unanimous* in favour of dismissal.¹⁰⁵ Although

⁹⁹ Cf. GIROTTI and KHOURY, Commentary on c. 498, 412.

¹⁰⁰ Cf. *ROSBM*, rule 394, §1.

¹⁰¹ Cf. GALLEN, "The Proposed Canons on the Consecrated Life Explained: IV," 895.

¹⁰² According to *ROSBM*, rule 412, §1, any religious priest, having at least 12 years of religious profession in the Order, and is at least 35 years of age, may be elected to the position of general councillor. For validity, should a general councillor be unable to participate in the meeting, the superior general is to appoint another priest as a substitute. Cf. GIROTTI and KHOURY, Commentary on c. 498, 412; cf. also GALLEN, "The Proposed Canons on the Consecrated Life Explained: IV," 895.

¹⁰³ Cf. *ROSBM*, rule 394, §4.

¹⁰⁴ See *ROSBM*, rules 519, §4, 403, §2.

¹⁰⁵ See ABBASS, "Dismissal of Members in Perpetual Vows," 958; see also HOLLAND, "Chapter VI Separation," 865.

all councillors together with the superior general participate in the vote, the superior general, in order to dismiss a member, requires the consent of his council. The superior general alone is to sign and issue the decree.¹⁰⁶ The notary, i.e., the general secretary, authenticates the decree.¹⁰⁷

Although the *ROSBM* are silent regarding the decree, the dispositive section of the decree must be motivated, and the causes of dismissal must be stated.¹⁰⁸ The decree must restate, at least in summary, the facts, the law and the argument.¹⁰⁹ Moreover, according to *ROSBM*, rule 532, §2: “[t]he decree of dismissal includes dispensation from profession and from all obligations as a Religious.” For validity, the decree must indicate the right of the dismissed member to have recourse or request that the case be handled judicially to the competent authority, which is the Dicastery of the Eastern Churches, and must take place within thirty useful days of receiving notification of the decree.¹¹⁰

4.1.3.1.5 — Execution of Dismissal

After the decree of dismissal is signed by the superior general, *ROSBM*, rule 534, §1 states: “[t]he decree of dismissal must be communicated as soon as possible to the

¹⁰⁶ Cf. D.J. ANDRÉS, “De collegio decernente dimissionem religiosorum (can. 699, §1),” in *Commentarium pro religiosis et missionariis*, 69 (1988), 203-206.

¹⁰⁷ Before the superior general with his councillors proceed to vote on the dismissal of a member from the Order, there must be a conviction that the person being dismissed is incorrigible, i.e., the superiors (local superior, the provincial superior) are to make every effort to induce a member to amend his ways and persevere in the Order. Cf. GIROTTI and KHOURY, Commentary on c. 498, 412.

¹⁰⁸ See *CCEO*, c. 500, §2, 1°.

¹⁰⁹ Cf. *CCEO*, c. 1294, 3°; see WILLIAMSON, Commentary on c. 699, §1, 393.

¹¹⁰ See *CCEO*, c. 501, §2; see also S. HOLLAND, “Select Questions in Religious Law: Admission, Separation, Approbation,” in *CLSA Proceedings*, 44 (1982), 133.

Religious concerned. The decree takes effect from the time that it is communicated to concerned member.”

The decree of dismissal does not require any confirmation by the Apostolic See.¹¹¹ In the process of communicating the decree to the person concerned, attention should be directed to the part of the decree which indicates the right of the dismissed member to have recourse.¹¹²

The *ROSBM* does not foresee a case wherein it is impossible to locate the member who is to be dismissed from the Order for notification of the decree. Two possibilities can be considered in a situation such as this. The first, an accused member did not participate in the process of dismissal, as was stated above when the superior sends the canonical warnings. All this must be documented in the acts of the process, similar to a contentious trial.¹¹³ The second, the accused member foresees the decision and disagrees with the superior general. Subsequently, he does not appear to have received the decree of dismissal, and his place of residence is unknown. This information must be documented during the process. The superior general sends the decree to the provincial superior of the accused, and appoints the provincial superior as the executor of the decree.¹¹⁴ Although *CCEO*, canon 501, §1 does not require confirmation of the decree by the Apostolic See, in such cases it is advisable to inform the Dicastery for the Eastern Churches, and highlight whether the accused member took part in any portion of the process, or whether he refused to accept

¹¹¹ See *CQD*, art. 7, in *AAS*, 114 (2022), 293, in *Communicationes*, 54 (2022), 87; see also Appendix III.

¹¹² Cf. E. WILLIAMSON, Commentary on c. 700, in *CLSGBI Comm*, 394.

¹¹³ See *CCEO*, cc. 1272, §1, 1273, §2, 1274, §1.

¹¹⁴ See *CCEO*, c. 1522, §1.

the decree of dismissal. The dismissed member by the decree has the right to lodge a recourse against the decree, or request that the case be handled judicially.

4.1.3.2 — Dismissal of Religious with Temporary Profession

ROSBM, rule 532, §1 states that in the process of dismissal of a member with temporary profession, the competent superior is: “the Superior General with the consent of his Council, with documentation and the proposal of the Provincial Superior with the consent of his Council”.

Before initiating the procedure of dismissal, *ROSBM*, rules 512-514 recommend that all means be applied in an attempt to correct the behaviour of the accused member, including fraternal correction, paternal admonition and the imposition of penances.

Saint Basil in his short ascetical rules teaches:

Q. Of the manner in which the fault of the offender should be corrected?’

R. The cure of those afflicted by evil passions should be effected according to the method used by physicians. The superior, therefore, must not become angry with the sick, but he must wage war upon their malady by setting up a counter-irritant to the vice, curing the infirmity of the soul by drastic measures, if need be.¹¹⁵

Saint Basil compares the superior to a physician. He lays down the rule that a correction is to be applied by the superior not with anger with his patient, but fights against the disease.¹¹⁶ The vice must be attacked, and the infirmity of the soul corrected, and, if necessary, by a somewhat severe regimen. Saint Basil gives examples: pride is to be corrected by ordering the practice of humility, foolish talking by silence, immoderate sleep

¹¹⁵ SAINT BASIL, *Ascetical Works*, Long Rule 51, 328.

¹¹⁶ See DUNN, *The Emergence of Monasticism*, 70.

by wakefulness in prayer, slothfulness by work, greediness by abstinence from food, discontent by separation from the rest of the brethren.¹¹⁷

Q. On the dispositions in which punishment should be received.

R. The superior should apply remedies to the weak in a dispassionate manner, so, in turn, those undergoing treatment should not look upon the penalties imposed on them as hostile act, not regard as despotic the solicitude shown them by the superior in a spirit of compassion for the salvation of their souls.¹¹⁸

Saint Basil continues, the superior who neglects to remind the sinner of his faults, is liable to severe condemnation. The superior is in charge of all, and he must remember that he is to give an account of each, “the superior is obliged, therefore, to be vigilant on behalf of the souls of the brethren and as seriously concerned for the salvation of each one as if he himself were to render an account for him.”¹¹⁹

From the very beginning of the establishment of monasticism on the East, which is called today consecrated life, attention is drawn to the fact that the superior is the supreme head of the monastery,¹²⁰ and is the model of the entire community, to whom is to show obedience as authority.¹²¹ Saint Basil emphasized that good order in the community come

¹¹⁷ Cf. SAINT BASIL, *Ascetical Works*, Long Rule 51, 328.

¹¹⁸ Ibid, Long Rule 52, 287-288.

¹¹⁹ Ibid, Long Rule 25, 329.

¹²⁰ See DUNN, *The Emergence of Monasticism*, 84; cf. SAINT BASIL, *Ascetical Works*, Long Rules 30-31, 293-294.

¹²¹ “The monastic tradition would waver between two forms of obedience: the more “personal”, where the superior actually holds the place of God, and the more “scriptural”, where the written law is the real “superior” (KOCHUPURACKAL, *Religious Authority and Power*, 88).

through obedience to the superior, and the duties of the superior are to correct,¹²² reproof¹²³ and imposing of penances on a member in order to set him back on the right path.¹²⁴

If there is no positive response to the means applied, the competency of the provincial superior is to proceed in gathering of evidence concerning the possible guilt of the member.¹²⁵

ROSBM, rule 532, §1 provides similar conditions and procedures as *CCEO*, canon 552, §§2-3, which were previously outlined in 2.1.4.1 — dismissal of a member with temporary profession. Rule 532, §1, 2° provides that the superior (in this case even the local superior), may issue warnings with the threat of dismissal from the Order either in writing or in the presence of the religious community. The local superior must document all proceedings and report to the provincial superior. Rule 532, §1, 2° does not include a

¹²² The one who is silent is unmerciful, not the one who corrected. See SAINT BASIL, *Opere ascetiche*, A. Šeptyckyj (Ukrainian trans.), Biblioteca spirituale Ucraina, vol. 76, Rome, Edizioni dei PP. Basiliani, 1989, Shorter Rule 4, 239; cf. *ibid*, Shorter Rule 182, 312.

¹²³ “The superior, also, should endeavor[u]r by private exhortation” (SAINT BASIL, *Ascetical Works*, Long Rule 28, 290).

¹²⁴ Cf. SAINT BASIL, *Ascetical Works*, Long Rules 24-36, 286-306; see MORISON, *St. Basil and His Rule*, 96.

¹²⁵ See HREN, *La potestà del superior Maggiore*, 259.

“If he is neither converted after much admonition nor cures himself by his own actions with tears and lamentations, being, as the proverb has it, ‘his own destroyer,’ we should, as physicians do, cut him off from the body of the brethren as a corrupt and wholly useless member” (SAINT BASIL, *Ascetical Works*, Long Rule 28, 290).

provision for a time limit between warnings¹²⁶ although the superior must give an accused member time to correct his negative behaviour.¹²⁷

If the cause of dismissal referred to in *ROSBM*, rule 532, is difficult to prove,¹²⁸ or if the provincial superior foresees that the temporary profession of a member will expire¹²⁹ during the process of dismissal, *ROSBM*, rule 80, §2 states, “the Provincial Superior may, with due regard for the procedure for considering a request, set out in the rule 75, exclude a Religious with temporary profession from renewal of profession.” The motivation of exclusion of a member from renewing profession is to be based on a just cause and “must be proportionate to the matter at issue, in contrast to merely insignificant reasons or personal preferences.”¹³⁰ When assessing the sufficiency of the just cause, the common good of the religious institute is to be considered above that of a member.¹³¹

¹²⁶ The interval between one warning and another is not specified. However, a period of one month, or even fifteen days, will probably suffice. *CIC*, canon 697, 2° provides for a period of at least fifteen days between the first and second warnings. Cf. GIROTTI and KHOURY, Commentary on c. 498, 412.

The warnings can be similar to those of *ROSBM*, rule 533, §3. When the canonical warnings rendered are deemed to be in vain, and the period of three weeks of useful time has elapsed after the last warning, the provincial superior may proceed to the stage of dismissal of the member who has demonstrated dereliction against the profession.

¹²⁷ To protect a member and his right to defense, canon law gives him ample opportunity to become aware of the measure as well as its implications and to enjoy the freedom of dialogue and discussion necessary for the maturation of his conscience, which is not always able to grasp the seriousness of the case and is not always willing to reveal itself to superiors with whom he often has a conflictual and not entirely peaceful relationships. See G. GIROTTI and J. KHOURY, Commentary on c. 552, in PINTO, *Commento CCEO*, 442.

¹²⁸ It is clear that the superior general is to know the causes of dismissal with certainty, and that indications or presumptions of guilt are not sufficient. Cf. *ibid.*

¹²⁹ The better option is to wait for the expiry of the temporary profession. See HOLLAND, “Chapter VI Separation,” 867.

¹³⁰ E. MCDONOUGH, “Exclusion from Profession at the Expiration of Temporary Profession,” in *R/R*, 60 (2001), 544.

¹³¹ Some examples of reasons for exclusion from making further profession: (1) lack of religious spirit, which is noticeable in an absence of a steadfast and constant vocation to consecrated life, and is coupled with serious doubts as to the general suitability for religious; (2) the incapacity to undertake the apostolic work of the institute stemming from a deficiency in general capability, intellect, or diligence, from a shortcoming in sound judgment, laziness, negligence, or due to culpable or inculpable reasons; (3) insufficient capacity for spiritual progress; (4) the absence of community spirit leading to significant discord within the community;

The exclusion of a member from renewing profession is not a dismissal. However, the member who is not admitted to a renewal of further or perpetual profession,¹³² may lodge hierarchical recourse if he believes that this decision is unreasonable or unjustified.¹³³ J.F. Gallen implies that recourse to the Apostolic See by a member who has been excluded from the renewal of profession, or who was not admitted to perpetual profession, “has very little hope of success except in the case of a clearly illegal exclusion. The Holy See evidently knows that by canon law the competent higher [superior] is the judge of the suitability of a member for profession.”¹³⁴

4.1.4 — Expulsion of a Professed Member

ROSBM, rule 530, §1 upholds the authority of the provincial superior to expel a member from the religious house:

The Provincial Superior with the consent of his Council can immediately expel from the religious House a Religious who is the cause of very grave imminent external scandal or great harm to the Order, obliging him to put off the religious habit, with due regard for the procedure set out in §2.

In order for the expulsion to be legitimate, the provincial superior presents evidence to the councillors justifying expulsion, and subsequently, he obtains the consent of his council.

In cases of urgency, *ROSBM*, rule 530, §3 allows:

If the case is urgent and there is insufficient time to apply to the Provincial Superior, the local Superior, observing the procedure set out in §2, with the consent of his Council, can expel the

(5) it is predictable that a member will be more detrimental than beneficial within the institute. See J.F. GALLEN, “The Proposed Canons on the Consecrated Life Explained: IV,” in *RfR*, 39 (1979), 888-889.

¹³² Exclusion must be conveyed in written form, including at least a summary of the reasons provided, in accordance with *CCEO*, canons 1514, 1519, §2. See MCDONOUGH, “Exclusion from Profession,” 544.

¹³³ See AWITI, “Formation During the Period of Temporary Vows,” 421.

¹³⁴ GALLEN, “The Proposed Canons on the Consecrated Life Explained: IV,” 890.

Religious from the religious House, after which he immediately notifies the Provincial Superior.

The local superior, with the consent of his council,¹³⁵ also bears the authority to expel an accused member from a religious house.¹³⁶ Two conditions must be fulfilled prior to the expulsion of the member: (1) the case must be one of urgency, and (2) sufficient time is not available to apply to the provincial superior.¹³⁷ It is to be noted that, *ROSBM*, rule 530, §3, limits the power of expulsion to that of the local superiors who have an established council, and it obliges the local superior to inform the provincial superior immediately.¹³⁸

4.1.4.1 — Collection of Proofs and Decision

Before issuing a decree of expulsion, whether it pertains to a local superior or provincial superior, he must proceed according to the stipulations of *CCEO*, canon 551 and *ROSBM*, rule 530, §2:

The Provincial Superior, learning of the delict committed by his subordinate, gathers the proofs confirming the offence and presents the charges and evidence to the Religious, giving him the opportunity to defend himself; after determining everything, with moral certainty, having obtained the consent of his Council, the Provincial Superior issues the decree of expulsion of the Religious from the religious House.

The provincial or local superior must gather the proofs in order to confirm that a crime or delict has been committed.

ROSBM, rule 530, §1 refers to reasons, i.e., very grave imminent external scandal or great harm to the Order, in canon law by which the member could be expelled from the

¹³⁵ Cf. *ROSBM*, rules 394, §1, 479, §§1-2. Saint Basil teaches that the superior “is bound to take counsel with these and to deliberate with them on community matters, in obedience to the advice of Him who said: ‘Do all things with counsel’ (Eccli. 32.24)” (SAINT BASIL, *Ascetical Works*, Long Rule 48, 326).

¹³⁶ See ABBASS, *The Consecrated Life*, 412.

¹³⁷ Cf. G. GIROTTI and J. KHOURY, Commentary on cc. 551, in PINTO, *Commento CCEO*, 441.

¹³⁸ See *Nuntia*, 24-25 (1987), 104.

There is no explanation regarding the notification by the local superior of the major superior. See ABBASS, *The Consecrated Life*, 412.

religious house. According to *CCEO*, canon 1450, §1, if a member has committed a homicide, or *CCEO*, canon 1450, §2, if a member was directly involved with some person, (such as a member happens to be a doctor) and performed a completed abortion. In addition, other grave reasons include, a case of a situation involving a member, “who has kidnapped or unjustly detained, seriously wounded or mutilated, or inflicted bodily or mental torture on a person,”¹³⁹ regardless of whether the victim is a member of the Order. Lastly, a member who commits a delict against chastity as outlined in *CCEO*, canon 1453.¹⁴⁰

The superior who took part in the process of investigation expels the member from the religious house only after the proofs have been collected, and he has obtained the consent of his council.¹⁴¹ He must also possess moral certitude regarding the decision.¹⁴² The decision of expelling the member from the house is to be signed by the superior and is authenticated by a notary.

¹³⁹ *CCEO*, c. 1451.

¹⁴⁰ The distinction is be made between the expulsion process, which is an administrative act of a competent superior, and the penal process, whether administrative or judicial, which can be accomplished only by the major superiors, who have to define whether a member committed a delict or not as outlined in *CCEO*, canons 1450, 1451, and 1453. Cf. SÁNCHEZ-GIRÓN RENEDO, “La expulsión de un instituto religioso,” 711.

¹⁴¹ See *ROSBM*, rule 530, §2.

Upon rendering the decision of expulsion from the religious house, canon law does not demand that all councillors be present. However, in order that the consent of the councillors is legitimate, it must be decided by an absolute majority of councillors. See *CCEO*, c. 924, 1°.

¹⁴² Cf. *CCEO*, c. 1291, §1.

4.1.4.2 — Dismissal of Member from the Order

After the member is expelled from the religious house, if the case warrants, the provincial superior shall continue the process until the definite dismissal of the member takes place.¹⁴³ *ROSBM*, rule 530, §4 states:

Because the expelled individual continues to be a Religious, as expulsion is not dismissal, the Provincial Superior shall, if necessary, ensure that the process of dismissal of the Religious takes place in accordance with the norms of law, or he refers the matter to the Superior General, forwarding to him all the pertinent acts and documents, together with the written responses of the Religious and a description of the case.

The provincial superior has two options after expelling a member by decree.¹⁴⁴ First, he must ensure, if appropriate, that the juridical process of dismissal from the Order was done in accordance with the *ROSBM*. If the member has made perpetual profession, the same extra-judicial process should take place as described according to 4.1.3.1, regarding the dismissal of a religious with perpetual profession. If the member has made temporary profession, the same extra-judicial process should take place as described according to 4.1.3.2 – dismissal of a religious with temporary profession.¹⁴⁵

¹⁴³ The superior general as hierarch have jurisdiction in penal matters (*CCEO*, canons 1468ff.), which he can exercise over the members under his authority. According to *CCEO*, canon 1486, the superior general can resolve an administrative penal process by decree. Cf. SÁNCHEZ-GIRÓN RENEDO, “La expulsión de un instituto religioso,” 712-713.

¹⁴⁴ See E. WILLIAMSON, Commentary on c. 703, in *CLSGBI Comm*, 395.

¹⁴⁵ Once the actions foreseen for expulsion in *ROSBM*, rule 530, §2 have been carried out (gathering evidence and giving an accused member the possibility of defending himself), the immediate provincial superior, who is hierarch, could impose a penalty established in *CCEO*, canons 1450, 1451 and 1453, with due regard for *CCEO*, canon 1402, §3, and refer the process to the superior general for confirmation of expulsion or even dismissal in accordance with *CCEO*, canons 500 and 552. Cf. SÁNCHEZ-GIRÓN RENEDO, “La expulsión de un instituto religioso,” 712-713; cf. also E. AYUBAN, “Duties and Rights of Provincial Superiors in Clerical Religious Institutes in the Light of the *tria munera* of the Church,” in *Philippine Canonical Forum*, 8 (2006), 172.

There cannot be excluded the possibility that the hierarch of eparchy may initiate penal law procedure when a member commits one of the delicts mentioned in *CCEO*, canons 1450, 1451, and 1453. The distinction between actions related to punishment and expulsion of a member becomes clearer and more compelling. However, the authority remains with the major superiors of the religious institute by virtue of *CCEO*, canons 498 and 551. Cf. SÁNCHEZ-GIRÓN RENEDO, “La expulsión de un instituto religioso,” 713-714.

Second, the provincial superior may refer the matter to the superior general of the Order for him to render his decision, while ensuring the protection of the right of defence of the person concerned. A situation could arise in which a member who, by his legitimate actions, did not intentionally commit any delict or any illegal action that caused very serious damage to the Order. In this case the provincial superior is obliged to inform the superior general of the matter.¹⁴⁶

The expelled member, even though he still remains in the Order, according to *ROSBM*, rule 530, §5 is sanctioned as follows:

For the Religious who is expelled from the religious House, the right of active and passive voice is suspended; if he is a cleric, he is prohibited from exercising sacred orders, unless the Superior General determines otherwise.

The expelled member who has made perpetual profession¹⁴⁷ in the Order, beyond the purging of his religious habit, also temporarily loses an active or passive voice until the formalization of his status occurs.¹⁴⁸ If a cleric, he is not permitted to exercise sacred orders, unless allowed by the superior general.¹⁴⁹ Conditions may be imposed on the exercise of sacred orders, e.g., private Divine Liturgy or Divine Praises or performing the sacrament of reconciliation, depending on the delict or crime of the priest.

The location of a residence for an expelled member is neither determined by canon law nor by the *ROSBM*. All members of the province are subject to the power of governance

¹⁴⁶ See HREN, *La potestà del superior Maggiore*, 193-194.

¹⁴⁷ “By perpetual profession, the Religious definitively accepts the religious state. He ceases to be enrolled in his own eparchy and is incorporated by full right in the Order, acquiring in it an active and passive voice” (*ROSBM*, rule 98).

¹⁴⁸ Cf. *ROSBM*, rule 275, §3.

¹⁴⁹ A prohibition from exercising sacred orders is not suspension a *divinis*, but is only a precautionary measure. See GIROTTI and KHOURY, Commentary on c. 498, 410.

of the provincial superior.¹⁵⁰ It is the responsibility of the provincial superior, who, after evaluation of the facts, informs the expelled member of the arrangements made for his accommodation.¹⁵¹

ROSBM, rule 534, §1 envisages that the decree of dismissal¹⁵² is to be communicated to the religious member concerned as soon as possible, so that he can then take appropriate steps, with due regard for *ROSBM*, rule 532, §3 or rule 534, §2.¹⁵³

4.2 — Judicial Dismissal from the Basilian Order

CCEO, canons 500 and 501, envisage that dismissal occurs through an extra-judicial process. However, the judicial process is also possible in order to better protect justice and the rights of a religious.

The superior general, according to *ROSBM*, rule 519 §4, “can exercise judicial power over all the Religious in the first instance.” *ROSBM*, rule 534 §2, allows a member who, having been dismissed under the extra-judicial process from the Basilian Order, due to a perceived injustice can request that his case be considered judicially. Moreover, the superior general himself, based on the gravity of the case, i.e., the superior general has reasons to believe that a member committed a delict, may decide to conduct a penal judicial trial to establish or to reject the guilt of a member. In light of the outcome of a judicial

¹⁵⁰ See *ROSBM*, rule 426, §1.

¹⁵¹ See WILLIAMSON, Commentary on c. 703, 395; see also HREN, *La potestà del superior Maggiore*, 262.

¹⁵² Cf. *CCEO*, c. 501, §1.

¹⁵³ Cf. *ROSBM*, rule 530, §7.

process, and if the case warrants, the superior general may start an extra-judicial process of dismissal of a guilty member.

If the member commits a *gravius delictum* reserved to the DDF, the DDF may entrust the Basilian Order to adjudicate this case either in a judicial or an extra-judicial process. In this situation, the dismissal of a member from the Order is a decision ultimately rendered by the superior general.

4.2.1 — Request for Judicial Process in Dismissal

ROSBM, rule 534, §2 considers the judicial dismissal as a request for a change of the type of trial. This request is made against the decree of dismissal issued by the superior general:

The individual concerned can make recourse against the decree of dismissal to the Apostolic See within thirty useful days from the day of the intimation of the decree or request that the case be handled judicially. The expenses for these proceedings are to be covered by the Province to which the Religious belongs. The recourse has the effect of suspending execution of the decree.

Rule 534, §2, refers to the norm of *CCEO*, canon 501, §§2 and 4 which was modified by Pope Francis. The general chapter, held in 2024, revised the rules of *ROSBM* which pertain to dismissal of members from the Order, so as to comply with canon law.¹⁵⁴

Rule 534, §2 states that within thirty days, a member can make recourse, with suspensive effect, against a decree of dismissal to the competent authority, or request that the case be handled judicially. In light of the change to *CCEO*, canon 501, §2, and according to the statutes of the Basilian Order, only a member with perpetual profession

¹⁵⁴ See THE BASILIAN ORDER OF SAINT JOSAPHAT, RESOLUTIONS – EXPLANATIONS – ORDERS, XV Roman General Chapter 2024, no. 26, Rome, General Council, 2024 (private publishing), 18-21.

bears the right to request that the case be handled judicially.¹⁵⁵ In the modification of *CCEO*, canon 501, §2, Pope Francis deleted the clause, “been confirmed by the Apostolic See,” thus allowing a member of the Order, who expresses a grievance concerning the administrative decree of dismissal, to introduce a request for a judicial process. The judicial decision, which is a consequence of such a request, bears the weight of a definitive sentence.¹⁵⁶

4.2.2 — First Instance of Judicial Trial

The competent tribunal in the first instance for a penal case, according to *ROSBM*, rule 519, §§2 and 4, is the tribunal of the superior general.¹⁵⁷ The superior general is solely competent to begin the process of a penal judicial trial, which may result in issuing an extra-judicial decree of dismissal of a member from the Order following the norms of the Eastern legislation and the *ROSBM* on dismissal. In a penal judicial trial, the case must proceed in accordance with the norms of *CCEO*, canons 1471-1482, which refer to the delict for penal trials.

The statutes of the Order do not specify who may be subject to a judicial trial. Two elements must be considered in determining whether a member with temporary or perpetual profession should be subject to a judicial trial: (1) a request for a judicial process can only be lodged by a member with perpetual profession, and (2) duration of a judicial trial.¹⁵⁸

¹⁵⁵ Cf. *CCEO*, cc. 500-501.

¹⁵⁶ See DANIEL, “Collegial Decisions, Acts of the *Ponens* and Correspondence of Instances,” 2042.

¹⁵⁷ Cf. J.M. HUELS, “Internal and External Forum,” in *Practical Comm*, vol. 2, 1835.

¹⁵⁸ “The temporary profession normally lasts five years and must be renewed annually” (*ROSBM*, rule 73, §1).

Similarly, a penal judicial trial in the first instance can only be conducted for a member with perpetual profession. When the case is adjudicated in the first instance, and a member is aggrieved by the sentence, he has the right to appeal as per *CCEO*, canon 1311:

§1. An appeal must be introduced before the judge who rendered the sentence within the peremptory time of fifteen useful days from the intimation of the sentence.

§2. If an appeal is made orally, the notary is to put it in writing in the presence of the appellant.

An aggrieved member by the sentence can lodge an appeal to the superior general who, as a judge, rendered the decision. The *ROSBM* does not provide any norms regarding the penal judicial trial; therefore, if an accused member lodges an appeal, he must remember, in this case, that, according to canon law, he has only fifteen useful days. However, the superior general, according to *CCEO*, canon 1124, §2, may be justified in extending the time limit for lodging an appeal. Nevertheless, each case must be considered individually; the superior general, according to *CCEO*, canon 1124, §3, “is to take care that the trial does not last too long on account of such extensions.”

4.2.3 — Proposal for Statutes of the Tribunal

In order to adjudicate his own members in a penal judicial trial, the superior general, as a hierarch,¹⁵⁹ must establish a tribunal.¹⁶⁰ The superior general serves as moderator of

“To be valid, the renewal of temporary profession must take place on the same day and month as the previous profession or renewal of profession” (*ROSBM*, rule 76, §1).

¹⁵⁹ Cf. *CCEO*, c. 984, §3.

¹⁶⁰ The requirement to establish a tribunal is to be understood in a juridic sense. The superior general, acting as hierarch, is not necessarily required to erect a tribunal as a distinct institutional structure or juridic person. Rather, he must constitute the judicial authority in accordance with canon law by appointing the persons necessary for the adjudication of a case (judge or judges, notary and, where applicable, promoter of justice). In religious institutes such as the Basilian Order, this will ordinarily take the form of a tribunal constituted *ad casum*, without a permanent or institutional structure.

the judicial process and exercises ordinary judicial power.¹⁶¹ He appoints the officers, officials and other personnel to the tribunal following the norms of *CCEO*, and the statutes of the tribunal.

CCEO, canon 1070, stipulates where a judicial tribunal has been established, such a tribunal should have its own statutes with its regulation, which relates to the internal function of the judiciary.¹⁶² The goals of an ecclesiastical tribunal are significant because it places prominence on the objective of establishing the truth for the protection and restoration of justice in the Church.¹⁶³

A proposal for the composition of the statutes of a judicial tribunal of the superior general is presented in this thesis (Appendix I). The statutes are developed on the basis of the *CCEO*, the norms of the particular law of the Ukrainian Greek-Catholic Church, and the *ROSBM*, and are focused on the regulation of the practical aspects of the functioning of this tribunal.

This proposal is centred upon a description of the structure of the tribunal, its nature, composition and its competence. The tribunal is hereby established as an independent judicial body, wherein the tribunal of the superior general is a collegial tribunal with jurisdiction to adjudicate cases involving a penal process.¹⁶⁴ Controversies between members of the Order are adjudicated in first instance by the Province.¹⁶⁵ The proposal for

¹⁶¹ See DANIEL, “Tribunal Statutes,” 2023.

¹⁶² See *ibid.*

¹⁶³ See LLOBELL, “Due Process,” 193.

¹⁶⁴ See Appendix I, arts. 1-3.

¹⁶⁵ “The competent tribunal in the first instance for cases involving the Religious of the Province is the tribunal of the Provincial Superior, except in cases of dismissal; in the second instance – the tribunal of the Superior General, and in the third instance – the Apostolic See” (*ROSBM*, rule 519, §2).

the statutes of the tribunal includes norms regarding the location of the storage of documents pertaining to judicial trials and the strategies implemented in protecting their preservation,¹⁶⁶ norms regarding judicial expenses in accordance with canon law and the proper law of the Apostolic See.¹⁶⁷

The proposal for the statutes outlines, according to canon law, the appointment of the members of the tribunal, i.e., officers, officials and any other personnel (advocate) involved in the process according to canon law. Members of the tribunal must possess recognized legal qualifications and demonstrate impartiality and integrity.¹⁶⁸

The proposal for the statutes of the tribunal delineates the procedural norms of trial, which are fundamental to maintaining order, discipline and doctrinal integrity within the Basilian Order. The proposal outlines the steps followed in a canonical trial. Such steps are: initiation of the process by preliminary investigation,¹⁶⁹ an introductory phase which includes constitution of tribunal and presentation of the *libellus*,¹⁷⁰ summoning the parties, and opening the trial with formulation of the doubt.¹⁷¹ The next step of the trial is instructional phase, which covers presentation of evidence, of facts, data, judicial confession, documents, testimony of witnesses, expert reports,¹⁷² and the right of the accused member to present a defence and make a legal argument.¹⁷³ An incidental case

¹⁶⁶ Cf. *CCEO*, c. 259.

¹⁶⁷ See Appendix I, arts. 4-7.

¹⁶⁸ See *ibid*, arts. 8-16.

¹⁶⁹ See *ibid*, arts. 17-21.

¹⁷⁰ See *ibid*, arts. 22-26.

¹⁷¹ See *ibid*, arts. 27-33.

¹⁷² See *ibid*, arts. 34-44.

¹⁷³ See *ibid*, arts. 45-48.

must be resolved according to the prescripts of canon law.¹⁷⁴ The next step is the instructional phase in which comes the publication of the acts and presentation of additional allegations or defence material.¹⁷⁵ The last, concluding phase, consists of discussions between the parties, presentation of pleadings and observations, reaching moral certitude by the judges,¹⁷⁶ pronouncing the sentence, the opportunity to lodge an appeal, executing the sentence,¹⁷⁷ and judicial expenses.¹⁷⁸ The proposal includes the consequence of the process, which could be dismissal from the Order, and if the member is cleric, the inability to exercise sacred order until he finds a benevolent eparchial bishop.¹⁷⁹

Located within the appendix, the statutes of the tribunal allocate the following items, which should be completed by all tribunal officials: a statement of promise to fulfill the assigned function faithfully,¹⁸⁰ as well as an application outlining criteria for the selection of judges, the promoter of justice, etc.¹⁸¹

This proposal for the statutes of a tribunal aims to provide a clear, comprehensive, and adaptable foundation for the tribunal of the superior general, ensuring its effectiveness and legitimacy in serving justice. Commonly, the superior general exercises his administrative authority, although in accordance with *ROSBM*, rule 519, 4, he can exercise judicial power over all members of the Order. The *ROSBM* does not contain norms regarding the establishment of a judicial tribunal nor statutes for this tribunal. Therefore,

¹⁷⁴ See *ibid*, arts. 49.

¹⁷⁵ See *ibid*, arts. 50-52.

¹⁷⁶ See *ibid*, arts. 53-59.

¹⁷⁷ See *ibid*, arts. 60-69.

¹⁷⁸ See *ibid*, arts. 70-71.

¹⁷⁹ See *ibid*, arts. 72-76.

¹⁸⁰ Cf. *CCEO*, c. 1112.

¹⁸¹ See Appendix I, Appendices I-II.

this entirely original proposal may serve as a foundational step towards establishing a tribunal as one possible judicial authority within the Order.

4.3 — Response on *graviora delicta* Reserved to DDF

The protection of minors from abuse of a sexual nature is a priority professed throughout the entire Catholic Church.¹⁸² In 2018, in response to the Call of the Apostolic See, the CCCB issued in *ad experimentum* guidelines titled, *Protecting Minors from Sexual Abuse: A Call to the Catholic Faithful in Canada for Healing, Reconciliation, and Transformation*.¹⁸³ This document serves as a directive in support of the prevention of abuse and the protection of minors, vulnerable adults, those who habitually lack the use of reason.

The general chapter of the Basilian Order, which was held in 2022, responded in recognition of the challenges faced by the Church concerning the gravity of the matter of the prevention of sexual abuse.¹⁸⁴ The general chapter entrusts the superior general and provincial superiors, according to their respective jurisdictions, to appoint officials who will provide for the protection of minors and vulnerable adults from sexual abuse or

¹⁸² See CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *Protecting Minors from Sexual Abuse: A Call to the Catholic Faithful in Canada for Healing, Reconciliation, and Transformation*, CCCB Publications, Ottawa, 2018 (= *Protecting Minors from Sexual Abuse*), 5.

¹⁸³ In 2021 and in 2023 the Apostolic See issued revised norms respectively, *2021 Normae* and *VELM 2023*, on sexual abuse of minors. Not all norms of the guidelines of CCCB are in compliance with the revised norms of the Apostolic See.

¹⁸⁴ “In 2002, Pope John Paul II stated, “there is no place in the priesthood and religious life for those who would harm the young” (n. 3, *Address to the American Cardinals*, 23 April 2002). These words call to mind the specific responsibility of Bishops and Major Superiors and all those responsible for the formation of future priests and religious” (CONGREGATION FOR THE DOCTRINE OF THE FAITH, Circular Letter to Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics *Tra le importanti responsabilità*, 3 May 2011, in *AAS*, 103 (2011), 407, https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20110503_abuso-minori_en.html (12 November 2025)).

misconduct committed by members, employees and volunteers of the Basilian Order.¹⁸⁵ The responsibility of the commission is to study the appropriate documents of the Apostolic See, and of the Churches *sui iuris* in which the Order is active, which concerns the prevention, handling and response to accusations regarding incidents of sexual abuse or misconduct. The commission is to also work out a general written instruction for the whole Order, regarding prevention and handling of these abuses or misconducts, and the appropriate detailed instructions, particular to each province, taking into account the directives of local church and applicable civil law. Based on this resolution, the Canadian Province of the Most Sacred Heart of Jesus of the Basilian Fathers have developed and issued the following instruction, entitled, *Responsible Ministry: Policies and Procedures in Cases of Allegation of Sexual Misconduct*, approved by the provincial council in July of 2025.

The guidelines, *Protecting Minors from Sexual Abuse*, serve to, “outline the protocol of an appropriate canonical and pastoral response,”¹⁸⁶ to be issued by the authority of the Basilian Order in Canada to its own members, ordained or not ordained, who are the subjects of allegations of *graviora delicta*. A member of the Order who commits *graviora delicta* reserved to the DDF, is to be adjudicated appropriately, in accordance with the proper law of the Apostolic See.

The guidelines strongly suggest that Canadian secular legislation must be taken into account.¹⁸⁷ A member of the Basilian Order in Canada who commits a delict against

¹⁸⁵ See THE BASILIAN ORDER OF SAINT JOSAPHAT, RESOLUTIONS – EXPLANATIONS – ORDERS, XIV Roman General Chapter 2022, no. 25, Rome, General Council, 2022 (private publishing), resolution 1.

¹⁸⁶ See *Protecting Minors from Sexual Abuse*, 78.

¹⁸⁷ See *ibid*, 78.

chastity with a minor below the age of eighteen years, or someone who enjoys legal protection,¹⁸⁸ or a member who disseminates child pornography,¹⁸⁹ must be punished according to the criminal code of Canada. Moreover, all members of the Order must be made aware of the existence of the safeguarding policies of the eparchies where they serve, whether these are issued by the respective eparchy or by the Canadian province of the Order. As well, they must be made aware of the protocol of the eparchy where they serve concerning the prevention of sexual abuse of minors, youth and vulnerable adults.¹⁹⁰

The criminal law of Canada does not include a time limit for reporting acts of child sexual abuse, “no prescription period for denouncing the sexual abuse of minors or sexual assault in general.”¹⁹¹ The guidelines state that if an allegation of abuse is found to be

¹⁸⁸ Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who

(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

(b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.

(Criminal Code (R.S.C. 1985, c. C-46): 153 (1)).

¹⁸⁹ *Child pornography* means

(a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

(i) that shows a child engaged in, or depicted as engaged in, explicit sexual activity, or

(ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ of a child or the anal region of a child,

(b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a child that would be an offence under the *Criminal Code* (Canada),

(c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a child that would be an offence under the *Criminal Code* (Canada), or

(d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a child that would be an offence under the *Criminal Code* (Canada); (« pornographie juvénile »)

See Criminal Code (R.S.C. 1985, c. C-46): 163.1 (1)).

¹⁹⁰ See *Protecting Minors from Sexual Abuse*, 81.

¹⁹¹ *Ibid*, 87-88.

credible, the hierarch must seek derogation from the DDF on the statute of limitations.¹⁹²

2021 Normae, art. 8, §3 state:

The Congregation for the Doctrine of the Faith has the right to derogate from prescription for all individual cases of reserved delicts, even if they regard delicts committed prior to the coming into force of the present Norms.

The guidelines of the CCCB outline the steps that are to be followed in the event of an allegation of a delict of sexual abuse committed by a cleric or consecrated person.

4.3.1 — Preliminary Investigation

The provincial superior of the Basilian province in Canada, or a suitable person¹⁹³ appointed by the provincial superior, is to initiate a preliminary investigation after receiving the *notitia de delicto*. He shall follow the norms of *CCEO*, canons 1468-1470, and the norms of the guidelines of the CCCB entitled, *Protecting Minors from Sexual Abuse*, which, at present, are not fully compliant with the norms of the Apostolic See.¹⁹⁴ In July of 2025, the provincial council approved policies and procedures in cases of allegation

¹⁹² See *ibid*, 88.

¹⁹³ Morrisey notes, “[i]t is recommended today that each diocese have a delegate appointed by the diocesan bishop to be an “investigator” (c. 1717, §1) to whom shall be referred any allegation of sexual misconduct by a cleric, religious, or any other person under ecclesiastical authority in the diocese, whether such allegations are a matter of fact or of suspicion” (F.G. MORRISEY, “The Pastoral and Juridical Dimensions of Dismissal from the Clerical State and of Other Penalties for Acts of Sexual Misconduct,” in *CLSA Proceedings*, 53 (1991), 228); cf. *Vademecum*, no. 67, in *AAS*, 114 (2022), 935, RENKEN, *Substantive Law*, 637.

The provincial superior may appoint as suitable person – the misconduct policy administrator, and independent investigator who does not belong to the Basilian Order and who is not an employee or volunteer in the Canadian Province of the Basilian Fathers. Working together they must conduct the preliminary investigation. See THE ORDER OF ST. BASIL THE GREAT THE PROVINCE OF THE MOST SACRED HEART OF JESUS, *Responsible Ministry: Policies and Procedures in Cases of Allegation of Sexual Misconduct*, Approved by Provincial Council, July 2025 (=Responsible Ministry), part two, no. 3, G.

¹⁹⁴ According to *VELM 2023*, art. 2, §3: “the Ordinary who received the report shall transmit it without delay to the Ordinary of the place where the events are said to have occurred, as well as to the Ordinary of the person reported.”

of sexual misconduct,¹⁹⁵ which comply fully with the proper law of the Apostolic See and the *CCEO*.

In the case of a member who is alleged to have committed a delict against a minor, or against someone whom the law recognizes requires protection, the provincial superior is to report this to, “the proper children’s aid society and/or responsible law enforcement authorities, in accord with the applicable civil laws of the jurisdiction.”¹⁹⁶ Any sexual misconduct reported to the provincial superior is subsequently reported to the superior general.¹⁹⁷

In submitting his *votum*, the provincial superior must include documentation stating, “the perpetrator of the abuse admits his guilt or not, or has already been found guilty by a secular court.”¹⁹⁸

4.3.2 — Trial

The guidelines of the CCCB, *Protecting Minors from Sexual Abuse* state, “[i]n principle, sexual abuse cases are to be tried in a judicial process.”¹⁹⁹ *2021 Normae*, art. 9, §3 provides equality between a penal judicial process and extra-judicial process. The DDF is a competent authority to proceed in a penal trial; however, the DDF may, “direct the Ordinary or Hierarch how to proceed further,”²⁰⁰ i.e., whether the case must proceed in a penal judicial trial or by extra-judicial decree.

¹⁹⁵ See *Responsible Ministry*.

¹⁹⁶ *Responsible Ministry*, part one, no. 3; cf. SCICLUNA, “The Impact of Pedophilia,” 264.

¹⁹⁷ See *Responsible Ministry*, part two, no. 4, B.

¹⁹⁸ *Protecting Minors from Sexual Abuse*, 89.

¹⁹⁹ *Ibid*, 89.

²⁰⁰ *2021 Normae*, art. 10, §1, in *AAS*, 114 (2022), 117, RENKEN, *Substantive Law*, 617.

An extra-judicial process must be carried out according to *2021 Normae*. *2021 Normae*, art. 20, §§1-2 prescribes that the process is to be carried out by the hierarchy himself, or his delegate who must be a priest with a doctorate or a licentiate in canon law. He must be a priest of good morals, with qualities of prudence, and expertise in the law. The hierarchy, or the delegate, is assisted by two assessors, a promoter of justice and a notary. The case concludes with an extra-judicial decree. The hierarchy, in his decree, according to *2021 Normae*, art. 19, §2, cannot impose perpetual expiatory penalties without the prior mandate of the DDF.²⁰¹ However, *2021 Normae*, art. 26 allows that:

It is the right of the Congregation for the Doctrine of the Faith, in whatever stage and grade of the unfolding of the proceedings, to present directly the most grave cases mentioned above in artt. 2-6 to the decision of the Supreme Pontiff with regard to dismissal or deposition from the clerical state, together with dispensation from the law of celibacy, when it is manifestly evident that the delict has been committed, after having given the guilty party the possibility of defending himself.

When the delict committed by a member of the Basilian Order is, “manifestly evident,” the DDF may present this case for a decision to be made by the Roman Pontiff with regard to removal from the clerical state of the accused. If the decision is made by the Roman Pontiff, the law does not require a special request of dispensation from celibacy from a guilty member. The Roman Pontiff grants dispensation from the law of celibacy together with the removal from the clerical state.²⁰²

Recourse against the decree (process may be carried out by the DDF, hierarchy or by their delegate) can be presented to the DDF following *2021 Normae*, art. 24, §1. No further possibility of recourse exists in light of the *PE* in art. 197.

The DDF may direct the case to the hierarchy who can be whether superior general, provincial superior, or hierarchy of the place where the delict has occurred.

²⁰¹ See *Protecting Minors from Sexual Abuse*, 89.

²⁰² Cf. *ibid*, 89.

The promoter of justice initiates the penal judicial trial by naming the particulars of the accusation. The case, is handled in a penal judicial process according to *CCEO*, canon 1084, §1, is conducted by a collegiate tribunal of three judges, and the trial is concluded with the imposition of a sentence. *2021 Normae* are silent in terms of whether the tribunal must have the prior mandate of the DDF to impose the perpetual expiatory penalties. In order to impose, on a priest, deprivation of office, title, insignia or a suspension for more than one year, or demotion to a lower grade, removal from the clerical state or major excommunication, *CCEO*, canon 1402, §3 prescribes that this penalty can be imposed in a penal trial. Therefore, if the DDF directs the hierarch to proceed with the case in a penal judicial trial, the tribunal is to follow *CCEO*, canon 1468-1482. The guidelines of the CCCB, *Protecting Minors from Sexual Abuse*, do not provide any commentary on *2021 Normae*, art. 19, §2, as this norm is more recent than the guidelines of the CCCB itself. If the accused member feels aggrieved by the sentence of the tribunal, may present an appeal against the decision to the DDF, with the exclusion of further recourse.²⁰³

The *ROSBM* is silent regarding the procedures of a penal judicial trial, including a case of sexual misconduct of minors. However, *ROSBM*, rule 530, §1, stipulates that the provincial superior, with the consent of his council after receiving the *notitia de delicto*, and provided that the report is *saltem verisimilis*, can expel a member from the religious house and oblige that member to put off the religious habit.

²⁰³ See *2021 Normae*, art. 18, in *AAS*, 114 (2022), 119, RENKEN, *Substantive Law*, 619; see also *Protecting Minors from Sexual Abuse*, 91.

4.3.3 — Rights of the Accused

2021 Normae, art. 11 state that: “[w]ith full respect for the right of defen[c]e,” the provincial superior must notify an alleged member of the Order of the allegation and the evidence,²⁰⁴ and grant the accused an opportunity to defend himself. In a penal judicial or extra-judicial trial, according to *CCEO*, canons 1139, 1474, 1486, §1, 1°, the accused member must have an advocate and respond to the allegation. The right of defence is stated as the opportunity of the alleged abuser to defend himself and enlist the services of an advocate.²⁰⁵ *ROSBM*, rules 530, §2, 532, §1, 4°, give any accused member the opportunity to defend himself.

4.3.4 — Transition of Acts

Once the trial is completed, whether it is a penal judicial or extra-judicial process, and even if neither recourse nor appeal from a decree or sentence is proposed,²⁰⁶ *2021 Normae*, art. 16, §1 state, “all of the acts of the case are to be transmitted *ex officio* to the Congregation for the Doctrine of the Faith as soon as possible.” This rule holds whether it entails the imposition of a sanction or a decision of not guilty.

2021 Normae, arts. 16, §3, 23, §3, are new and they state that an appeal is presented exclusively before the Supreme Tribunal of the DDF – *Feria IV*, and recourse is presented to the *congresso* of the DDF. The guidelines of the CCCB, *Protecting Minors from Sexual Abuse*, do not provide any commentary on these norms.

²⁰⁴ See *VELM 2023*, art. 2, §3, in *AAS*, 115 (2023), 396, RENKEN, *Substantive Law*, 661.

²⁰⁵ See *Protecting Minors from Sexual Abuse*, 90.

²⁰⁶ See *ibid*, 91-92.

The responsibility of the superior general, if the case warrants, entails the initiation of the process of dismissal from the Order.²⁰⁷ This is accomplished according to the *ROSBM*, especially that which concerns the procedure of the trial, which was described above whether in 4.1.3 regarding the steps of dismissal in an administrative process. However, this process is simplified in that there is no need to collect evidence once again in order to prove the guilt of the accused member. The praxis from the DDF states in its decree that a member is guilty of an accused delict and the punishment is sufficient to make the decision of the dismissal of the member from the Basilian Order.

4.4 — Effects of Dismissal from the Basilian Order

A member of the Basilian Order, who is lawfully dismissed from the Order, loses all rights and obligations which arise from his religious profession.

4.4.1 — Dismissal *ipso iure*

ROSBM, rule 529, §1 sets forth:

As the result of dismissal by the law itself, the Religious automatically loses membership in the Basilian Order; however, he remains bound by his religious profession from which he can be released only by the Apostolic See.

Although a member who is dismissed *ipso iure* is no longer a member of the Basilian Order, he is, however, not freed from religious profession. After the member receives the declaration of a juridically confirmed dismissal, he is to place a request for release from

²⁰⁷ See Appendix IV.

the bond of perpetual profession. This request is made to the Apostolic See through the Dicastery for the Eastern Churches.²⁰⁸

4.4.2 — Administrative or Judicial Dismissal

Religious profession and all obligations arising from the religious profession are ceased for a member who is dismissed by decree or judicially. *ROSBM*, rule 535, §1 states:

As the result of dismissal, excepting what is provided in the rule 528, all the bonds and obligations arising from religious profession come to an end; if the party concerned is a cleric, he cannot exercise sacred orders until he finds a benevolent eparchial Bishop to welcome him in his eparchy.

A member who is lawfully dismissed, no longer belongs to the Order and he cannot be identified as a Basilian religious member.²⁰⁹

4.4.3 — Dispensation from the Clerical State

A member in sacred order who has been dismissed *ipso iure*, or by decree or judicially from the Order, and who wishes to be released from the priesthood, must make this request to the Apostolic See through the Dicastery for the Eastern Churches.²¹⁰

The sacrament of order leaves an ontological mark upon the soul of a person who receives this sacrament. Once ordained, a priest is considered a priest forever, echoing the words of Saint Paul from the Letter to the Hebrews (7:17): “You are a priest for ever, according to the order of Melchizedek.” *ROSBM*, rule 536 states:

§1. Once it has been validly received, sacred ordination never becomes invalid. However, a cleric can lose the clerical state as the result of legitimate imposition of the penalty of

²⁰⁸ Cf. *ROSBM*, rule 529, §2.

²⁰⁹ In the communication of the decree of dismissal, the dismissed member is to know of his right to lodge a recourse. This information is to be included this in the decree. Cf. GALLEN, “The Proposed Canons on the Consecrated Life Explained: IV,” 901.

²¹⁰ Cf. *CCEO*, c. 394, 3°.

deposition, as also by a rescript of the Apostolic See. The rescript is granted to deacons only with serious cause, and to presbyters, with very serious cause. The loss of the clerical state does not carry with it a dispensation from the obligation of celibacy, which is granted only by the Roman Pontiff.

§2. The Provincial Superior or the Superior General, upon the written request of the Religious, addressed to the Roman Pontiff in a spirit of humility and repentance with a statement of the central rationale, can initiate, through the appointed Instructor, in accordance with procedural norms, an investigation of the case regarding dispensation of the individual concerned from the obligations arising from ordination, thus leading to the loss of the clerical state and dispensation from celibacy.

§3. The competent body granting dispensation from the obligations arising from the clerical state is the appropriate Congregation of the Apostolic See, to which all the certified documents are submitted.

A member who wishes to receive a dispensation from the obligation of celibacy, must submit a written request to the provincial superior, or the superior general, who will forward this request to the Roman Pontiff.²¹¹

A dismissed member with temporary profession, who is in sacred order, must return to his eparchy, i.e., to the eparchy he was ascribed before he entered the Basilian Order.²¹² He must then submit himself to the decision of his bishop.

A dismissed member with perpetual profession, who wishes to exercise sacred orders, must locate a benevolent bishop who will receive him (assign him to his eparchy), or at least, receive him on a trial basis.²¹³ Prior to his acceptance into the benevolent

²¹¹ Cf. *CCEO*, c. 396; see CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Normae procedurales de dispensatione a sacerdotali caelibatu*, 20 October 1980, in *AAS*, 72 (1980), 1136-1137.

The Dicastery for the Clergy “is competent for cases of dispensation from the obligations assumed by ordination to the diaconate and priesthood involving diocesan clerics and members of Institutes of Consecrated Life and Societies of Apostolic Life from the Latin Church and from the Eastern Churches” (*PE*, art. 116, §2, in *AAS*, 114 (2022), 418, *Code of Eastern Churches*, 822).

²¹² Cf. *CCEO*, c. 531; cf. also *ROSBM*, rule 69, §1.

²¹³ See *CCEO*, cc. 494, 549, §3.

bishop's eparchy, a dismissed ordained member will remain without a proper bishop,²¹⁴ and therefore he will not be able to exercise sacred orders.²¹⁵

4.4.4 — Recourse

A member with temporary or perpetual profession has the right to submit a recourse against the decree of dismissal from the Basilian Order. *ROSBM*, rule 532, §3 (cf. *ROSBM*, rule 534, §2) states:

The individual concerned can make recourse against the decree of dismissal to the Apostolic See within thirty useful days from the day of the intimation of the decree. The recourse has the effect of suspending execution of the decree.

A member who is found guilty, and ultimately dismissed from the Order, is granted full opportunity to defend himself. After communicating the decree of dismissal from the Order to the dismissed member, he will have a period of thirty useful days²¹⁶ to present a recourse. If the recourse²¹⁷ is presented, the documents and acts relating to the process, especially the responses of the dismissed member, must, “be faithfully submitted to the dismissing authority,”²¹⁸ i.e., the Dicastery for the Eastern Churches. “The documents and acts relating to the process are kept in the archive of the general curia of the Order and copies, in the archive of the Provincial Curia.”²¹⁹ It is recommended that all acts relating to the dismissal, especially the decrees of dismissal from consecrated life and documents relating to the removal from the clerical state, be kept in a secret archive.²²⁰

²¹⁴ See ABBASS, “Departure from Religious Institutes,” 127.

²¹⁵ See SALACHAS, “La vita monastica e religiosa,” 126.

²¹⁶ See *CCEO*, c. 501, §2.

²¹⁷ See *ROSBM*, rule 532, §§2-3.

²¹⁸ *CCEO*, c. 552, §2, 3°.

²¹⁹ *ROSBM*, rule 534, §3; see MUROPA, “Personnel Files,” 87.

²²⁰ See *CCEO*, c. 1470; see MUROPA, “Personnel Files,” 89.

If the decree of dismissal from the Order is upheld in the second instance, i.e., if it is definitive, a dismissed member may then have further recourse to the Apostolic Signatura.

PE, art. 197 delineates:

The Apostolic Signatura, as the administrative tribunal for the Roman Curia, adjudicates recourses against individual administrative acts, whether issued by the Dicastries or the Secretariat of State or else approved by them, whenever it is contended that the act being impugned violated some law, either in the decision-making process or in the procedure employed.

The proper law of the Apostolic Signatura states:

The Apostolic Signatura adjudicates recourses made within the peremptory time limit of sixty useful days against singular administrative acts issued by Dicastries of the Roman Curia or approved by them, whenever it is contended that the challenged act violated some law in the substance of the decision (*in discernendo*) or in the procedure used (*in procedendo*).²²¹

A recourse, lodged within sixty useful days with the Apostolic Signatura, is deemed to be against the decision of the Dicastery for the Eastern Churches which confirmed the dismissal from the Order.²²² This recourse is against the violation of a law, which means an error occurred in the procedure of the trial, the violation of some procedural norms; or an error in the substance of the decision, i.e., the decision is without reason, or is a faulty or false reason.²²³

²²¹ BENEDICT XVI, *Antiqua ordinatione*, art. 36, §1, in *AAS*, 100 (2008), 521, DANIEL, “Proper Law of the Supreme Tribunal of the Apostolic Signatura,” 633.

²²² Cf. SUPREME SACRED CONGREGATION OF THE HOLY OFFICE, *Normae specialis in Supremo Tribunali Signaturae apostolicae ad experimentum servandae post constitutionem apostolicam Pauli PP. VI “Regimini Ecclesiae universae”*, Vatican City, Typis polyglottis Vaticanis, 1968, English translation in *CLD*, vol. 7, 259.

²²³ See PONTIFICAL COMMISSION FOR INTERPRETATION OF THE DECREES OF THE SECOND VATICAN COUNCIL, reply, 11 January 1971, in *AAS*, 63 (1971), 330, English translation in *CLD*, vol. 7, 178-179.

4.5 — Assistance to a Member Dismissed from the Basilian Order

A member who is dismissed from the Basilian Order cannot demand any remuneration from the Order for any work performed in it;²²⁴ nevertheless, *CCEO*, canon 503, §2 requires that a member who leaves or is dismissed from the institute be treated with justice and mercy, i.e., be treated fairly, with evangelical charity.²²⁵

On January 25th, 1974, in response to the significance of the great number of members departing from consecrated life, the Sacred Congregation for Religious and Secular Institutes provided supportive directives for the institutes of consecrated life and societies of apostolic life in order to address this matter. These directives were delivered in the form of a decree on the, *Assistance to Those Who Leave Their Institutes*.²²⁶

These directives are currently the only direction from the Apostolic See, which addresses support and assistance to be given to individuals who leave or are dismissed from consecrated life. In consideration of the Church's concerns in this regard, the directives convey a need for the impending responsibility of the superiors general toward those who leave or are dismissed from religious institutes be addressed more effectively. The directives necessitate the provision of guidance and the development of regulations to

²²⁴ Cf. Appendix II.

There is a recommendation, if possible, that such a renunciation not to seek any compensation for work done in the Basilian Order is to be made in a way which is valid in civil law. Cf. M. WRIGHT, "Money and Patrimony: Religious and Their Personal Property," in *Australasian Catholic Record*, 74 (1997), 411.

"The Religious who earns a salary by his work or receives compensation for services, a pension or any other income, is to transfer the funds promptly to the Superior or the responsible person, or have them deposited directly into the account of the religious House to which he belongs" (*ROSBM*, rule 167, §1).

²²⁵ See HOLLAND, "Canonical Dismissal," 65.

²²⁶ See SACRED CONGREGATION FOR RELIGIOUS AND FOR SECULAR INSTITUTES, directives on the Assistance to Those Who Leave Their Institutes, 25 January 1974, in *Enchiridion Vaticanum, Documenti ufficiali della Santa Sede 1974-1976*, 11th ed, vol. 5, Bologna, Edizione Dehoniane Bologna, 1980 (=Assistance to Those Who Leave Their Institutes), no. 1, 35.

ensure that religious institutes provide proper treatment and respect for members who have lost the religious state.

4.5.1 — Justice and Equity to Dismissed Members

Concern for the welfare of all members of the Basilian Order is the duty of the superior.²²⁷ The helmsman of the Order, Saint Basil the Great, teaches: “[n]o one of us is self-sufficient as regards corporeal necessities, but we require one another’s aid in supplying our needs [...] God, the Creator, decreed that we should require the help of one another.”²²⁸

The directives on the, *Assistance to Those Who Leave Their Institutes*, emphasize that every religious institute has an obligation to provide for the spiritual, moral, social and temporal welfare of its members, as long as they remain in the institute. The institute must also take care of those who leave or are dismissed from the institute, for, nevertheless, these dismissed individuals remain members of the Church and deserve this support.²²⁹

Dismissed members who have dedicated a lengthy period of their lives to consecrated life may experience tremendous upheaval in their lives, e.g., members who obeyed their superiors did not have an opportunity to enact or engage in any major decisions throughout their lives, and, in this regard, they have no concept of daily life on their own; advocating for their own welfare if a necessity arose would be beyond the skillset acquired in a monastic environment. Furthermore, members do not have a need to acquire the basic

²²⁷ See *ROSBM*, rules 166, §1, 277.

²²⁸ SAINT BASIL, *Ascetical Works*, Long Rule 7, 248.

²²⁹ See *Assistance to Those Who Leave Their Institutes*, nos. 1-2, 35.

fundamentals of earning, spending or saving money; their vows of poverty²³⁰ preclude any financial concerns – they depend on the institute for all financial considerations. Members who have lived consecrated lives for many years may experience difficulties in transitioning into their new way of life, often without the support of family, colleagues from the institute or friends; they may encounter many challenges in this adjustment period such as seeking employment, establishing supportive social contacts and securing financial resources.²³¹

Pope Paul VI, in his annual meeting with auditors and officials of the Sacred Roman Rota, emphasized that canonical equity is the fruit of pastoral love, which is upheld by the spirit of Christ's mercy, and becomes a source of benevolence and charity. Equity seeks a higher form of justice with a spiritual goal in mind.²³² The equity which is shown toward dismissed members is a manifestation of evangelical charity (see Jhon 15:9,12).

Equity and charity demand that, upon dismissal from the Order, the personal property acquired by a dismissed member before joining the Order is not appropriated by the Order. The knowledge that the member received throughout the time of membership in the Order may serve to play an important role in the self-sufficiency of a dismissed member in future times.²³³

²³⁰ Cf. *CCEO*, c. 410.

²³¹ See MCDERMOTT, "Equity and Charity to Separated Members," 28; cf. GALLEN, "The Proposed Canons on the Consecrated Life Explained: IV," 894.

²³² See PAUL VI, Allocution to the Roman Rota on the Pastoral Nature of Church Law and Canonical Equity, 8 February 1973, in *AAS*, 65 (1973), 98-100, WOESTMAN, *Allocutions*, 118-119.

²³³ Cf. HOLLAND, "Policies," 129.

4.5.2 — No Claim for Work

The provincial superior is responsible for the appropriate treatment of each member of his province. This does not exclude the individual who, due to certain circumstances, left the Order. *ROSBM*, rule 535, §2 states: “[h]e who has been lawfully dismissed cannot make any claim against the Order; however, charity and justice are to be observed in his regard.” Equity and evangelical charity will be observed in ensuring that the provincial superior will act accordingly to provide fair treatment of a member who departs from the Order.²³⁴ *ROSBM*, rule 72, §3 outlines:

Whatever the Religious acquires during the period of temporary profession by his own industry or in respect to the Order belongs to the Order and must be transferred to the competent Superior, unless the contrary is lawfully proven.

A member, upon dismissal from the Order, has no right to claim remuneration for the work he performed during the time he spent as a member of the Order.²³⁵ However, if a dismissed member acquired social security benefits, such as pension, subsidy, insurance, Blue Cross, etc., during his stay in the Order here in Canada, the *ROSBM* does not contain any rule that would prohibit a dismissed member from accepting or retaining these benefits.²³⁶ Christian morality encourages the proper authority of the Order to demonstrate support, especially if the former member is in dire need. In this situation, the Order can assist the former member in altering social security benefits so that they are sent to him

²³⁴ Cf. HOLLAND, “Canonical Dismissal,” 65.

²³⁵ Cf. *CCEO*, cc. 553, 503.

²³⁶ Cf. HOLLAND, “Policies,” 129.

The Eastern Code encourages hierarchs to take into account the cleric’s vested right to insurance and social security as well as health insurance. See *CCEO*, c. 1410.

directly. The decision of a superior to provide financial assistance, and the manner in which this assistance is provided, may vary from case to case; it is a subjective judgment.

4.5.3 — Assistance for Leaving Consecrated Life

The directives on the, *Assistance to Those Who Leave Their Institutes*, state that an individual enters consecrated life freely, and he voluntarily places himself in a very unique situation. Religious profession is the basis of a spiritual nature that implies a total gift to God of everything that can be achieved in the course of consecrated life, even if this may involve a certain risk for the future.²³⁷ However, a member may leave consecrated life, or he may be dismissed from a religious institute. The ecclesiastical authority respects the decisions of each individual and encourages collaboration amongst the religious in an institute, i.e., major superiors and the former member in providing assistance and ensuring a smooth transition from the religious to the secular state.²³⁸

After studying *CCEO*, canon 503, and *ROSBM*, rule 535, §2 (which is a reiteration of canon law), and the documents of the Apostolic See, it was observed the Basilian Order had not provided any norms relating to the directives of the, *Assistance to Those Who Leave Their Institutes*, which clearly calls upon every religious institute to develop regulations given the circumstances existing in each country where the institute serves. This is a challenge which must be taken into consideration in the near future. The Basilian Order in Canada should begin by developing regulations as policies; following this, they should be presented to the Provincial directory proposing that these regulations may prove to be

²³⁷ See *Assistance to Those Who Leave Their Institutes*, no. 3, 35-37.

²³⁸ See *ibid*, no. 5, 37.

practical, functional and beneficial to other Provinces of the Order, and, subsequently, for the entire Order. These regulations may prove to be of assistance to a member who has left the Order, by securing resources required to earn a living, a place to reside, etc., more easily.²³⁹ Members who have lived in poverty, in obedience to their religious profession, have existed without any personal resources.²⁴⁰ Therefore, a response such as this, in support of a dismissed member, is a practice which demonstrates true charity and complete trust in Providence.

This thesis proposes a number of regulations which may be introduced into the Provincial directory, taking into account the four aspects: spiritual, moral, social and temporal well-being of those who have left the Order, following the directives on the, *Assistance to Those Who Leave Their Institutes*. In order to provide appropriate support, the Basilian Order in Canada must develop a strategy for organizing criteria in order to construct a profile for each member and their particular requirements. This would entail designing and creating a checklist of questions to determine the needs of members who left the Order. This checklist will take into consideration the age of the member, length of membership in the Order, the physical, mental and psychological state of the individual, appropriate support or therapy required, a clear assessment of educational achievements, marketable work skills and experience, and, ultimately, the potential for self-support.

²³⁹ See *ibid*, no. 10, 39.

²⁴⁰ See *Protecting Minors from Sexual Abuse*, 100.

“By the vow of poverty, the Religious more faithfully imitate Christ, partaking of his poverty, because “though He was rich, yet for our sake He made Himself poor, so that we through His poverty might become rich” (2 Corinthians 8:9). The Religious voluntarily renounce all property and the right to possess temporal goods as their own and to dispose of them independently, as provided in the rules 91, §1 and 100, §1. This frees them of all earthly burdens and “cares of life” (Shorter Rule, 88), so they may be “poor in fact and in spirit” and love God with all their hearts, storing up treasure in heaven” (*ROSBM*, rule 165).

A member who has left or was dismissed from the Order, even in circumstances such as the committing of a *gravius delictum* reserved to the DDF, remains a member of the Church, unless he was punished with a major excommunication. As a member of the Church, he continues to have access to the holy sacraments, especially the Most Holy Eucharist and to the Sacrament of Reconciliation – the vital sources of grace and healing. Such a member of the Church, if necessary, may choose a spiritual director from the Order for promoting his spiritual growth.

The Basilian Order in Canada can retain the names of members who have left the Order of the Canadian Province on its mailing lists. If the case warrants, the Basilian Order in Canada would welcome them into the associate program, after a stated period of time spent in virtuous living and mutual encouragement. Such individuals may continue to participate in various religious groups, such as: catechism for the adult person, bible studies group, etc. Jesus entreated all to: “Be merciful, even as your Father is merciful. Judge not, and you will not be judged” (Luke 6:36-37).

The Basilian Order in Canada may provide support to former members, e.g., a person who has reached an advanced age and has not acquired any professional education, and provide assistance with procedures related to applying for various social assistance programs that correspond to their abilities and, in addition, programs that would support their efforts of integration into secular life.²⁴¹ A parish may offer a social environment where former members may derive comfort and encouragement as part of a Church community; opportunity may arise for engaging in pastoral work, and, i.e., participating in

²⁴¹ Cf. MCDERMOTT, “Equity and Charity to Separated Members,” 31.

ministries, prayer groups and community activities, such as leading catechesis for groups of children and youth. He may provide counselling services, and demonstrate leadership in parish organizations.

However, former members may require support in order to integrate into secular life. The Basilian Order in Canada can also assist dismissed members, for a determined period of time, so as to assist in providing coverage for health insurance, arranging timelines for seeking employment and support in matters of health. Particular agreements between the Order and a dismissed member should be organized carefully, and legal expertise should be enlisted in order to avoid any claims which may surface at a later date.²⁴²

Subsidies and financial aid to dismissed religious members²⁴³ must be determined on a case-by-case basis.²⁴⁴ The dismissed member may also require some form of technical support to find employment.

²⁴² The dismissed member has a right to introduce a recourse to the Apostolic See regarding negligence or a voluntary neglect on the part of the Order, if the Order refuses to help the dismissed member in providing support for the basic needs of the member. Cf. MCDERMOTT, "Equity and Charity to Separated Members," 31-32.

"[T]he law clearly states that the complete termination of remuneration can only be associated with the penalty of dismissal from the clerical state (*CIC*, c. 1350, §1 [*CCEO*, c. 1410])" (G. INGELS and J.H. PROVOST, "Obligation of Support to a Priest in Treatment," in P.J. COGAN (ed.), *CLSA Advisory Opinions 1984-1993*, Washington, DC, CLSA, 1995, 64).

²⁴³ A member who is dismissed *ipso iure*, a member who is dismissed by a decree, a member who is dismissed because of *graviora delicta* and is found guilty in court of law.

²⁴⁴ Neither the directives on the, *Assistance to Those Who Leave Their Institutes*, nor the Basilian Order in Canada established a set of norms to determine the amount of funding a member should receive in support. In the past, monetary assistance was given to the member who had left the Order, but each case was distinct; a single standard had not been established.

In Canada, an established practice in the Roman Catholic Church exists for a member who left consecrated life. In addition to personal patrimony (dowry funds) if such exists, the individual receives:

- basic sum: \$3,000-\$5,000;
- \$500 - \$1,000 per year of membership;
- if the member has use of a car, the car accompanies the person;
- if the member has a pension plan (from teaching, nursing, etc.) the plan accompanies the person;

Establishing retirement plans for members who are in the Order would be a prudent strategy to adopt. Dismissed members could then be entitled to some form or portion of retirement benefits.²⁴⁵ The Basilian Order in Canada shall also provide assistance to a dismissed member in locating social services to provide him with monetary support or social subsidies from the Government of Canada, or within the province where he resides.

Attention should be given to the following areas of concern: has the individual received any personal financial aid from his family; is he able to manage his financial affairs independently; does he fully understand tax laws; does he have some knowledge or capability of establishing credit and procuring housing. The individual may discover some options for housing, perhaps through family or other social connections; if not, the Basilian Order in Canada may assist him to secure an appropriate and reasonably affordable residence within a Canadian province or territory.²⁴⁶ In order to assist a dismissed religious in locating and securing the support available to him, including social assistance, old age

- if the person has no pension plan, then other provisions are, at times, made for a monthly annuity, or a similar arrangement is made, (depending on the number of years an individual was a member in the institute, his educational background, health, job opportunities, etc.); in other instances, a lump sum is granted instead;

- in other instances, an interest-free loan is given to enable the member to make a down-payment on a house, or some similar arrangement.

After calculations are completed, the member should receive adequate funding, which is approximately \$20,000, in order to live at the poverty level of existence for at least one year. However, calculations should take into consideration the needs of current costs in daily life, and if the member is over 50 years of age and does not have a pension plan or external employment, the sum would most probably be closer to \$100,000 (which, in times of economic stability would produce approximately \$10,000 a year in interest – barely enough to exist). If the former member was employed in the past, then, of course, there should be no question of such a sum being provided.

These proposals can become the starting point for the Basilian Order in Canada to develop policies that will equitably treat each member who left the Order, and avoid double standards.

²⁴⁵ Cf. HOLLAND, "Policies," 131-135.

²⁴⁶ Cf. *ibid*, 132-133.

pensions and provincial health care benefits, the location of his chosen residence will be taken into consideration.

The bursar at the general or provincial level, or an individual appointed within or outside the Order, may be enlisted to assist dismissed members in understanding the functions and procedures of civil documentation, financial planning and budgeting. Each case must be scrutinized and treated individually, and, in consideration of the circumstances of the delict, some restrictions could arise in the future. Attention must be directed to the prescripts of the dismissal under *CCEO*, canon 497, i.e., a member who is a cleric and is unable to exercise sacred order due to his failure to locate a benevolent bishop who will accept him, according to *CCEO*, canon 494, §1.²⁴⁷

The circumstances of a dismissed member who possesses higher educational qualifications, has gained experience in his field of expertise, and, subsequently, has secured a sound, financial job placement will differ widely from the situation of a religious member who, due to advanced age or other influences, i.e. physically, intellectually or psychologically, is unable to obtain a position in order to provide for his basic needs.²⁴⁸ In this regard, one who suffers with poor health or other physical disabilities which prevent gainful employment, will require supplementary insurance.²⁴⁹ In these circumstances, the Basilian Order in Canada may also provide for the member (within its limitations, and

²⁴⁷ See ABBASS, "Departure from Religious Institutes," 123-124.

²⁴⁸ See Assistance to Those Who Leave Their Institutes, no. 7, 37.

²⁴⁹ See Assistance to Those Who Leave Their Institutes, no. 9, 39; cf. HOLLAND, "Policies," 133; cf. also MCDERMOTT, "Equity and Charity to Separated Members," 31.

contingent upon his capabilities and competence) a monetary gift to the dismissed member as a means of beginning a new path in life.²⁵⁰

The Basilian Order in Canada may create a program that addresses and provides support for the education and accreditation of dismissed members, and if necessary, it could provide some form of support, e.g., within its limitations, capabilities and competence, in the form of a monetary gift, in order for the member to complete his studies and earn a livelihood. The Basilian Order in Canada may also create a program for the acquisition of professional experience which would serve as potential for employment of an individual, and it would provide the support required for creating a new legal will. The Basilian Order in Canada shall assist in procuring gainful employment upon the dismissal of its members, especially for brothers within the Order.²⁵¹

The transition from one state of life to another is fraught with many challenges, especially in the case of an individual who has dedicated much of his life to consecrated life. Although an individual may have left consecrated life and embarked upon a journey of Christian faithful living, he deserves and is entitled to the full support of the ecclesial community. In addressing the spiritual, moral, social and temporal aspects of well-being, the Basilian Order in Canada seeks to ensure that each former member experiences dignity, support and the abiding love of God.

²⁵⁰ Cf. T.J. GREEN and G. INGELS, "Involuntary Dismissal from the Clerical State," in P.J. COGAN (ed.), *CLSA Advisory Opinions 1984-1993*, Washington, DC, CLSA, 1995, 429.

²⁵¹ Cf. MCDERMOTT, "Equity and Charity to Separated Members," 31.

Conclusion

A member of the Basilian Order who is guilty of an offence against religious profession or a delict that entails dismissal from the Order, must be dismissed taking into consideration *ROSBM*, rule 529. The competent superior shall follow the norms pertaining to a dismissal procedure with the utmost care.

In the process of dismissal of a member from the Order in Canada, the major superior, i.e., superior general, must follow both the norms of canon law and the *ROSBM*. If the case relates to *graviora delicta* reserved to the DDF, the major superior in Canada must follow the proper norms issued by the Apostolic See, the DDF, as well as the guidelines issued by the CCCB and the local bishop's document on Safe Environments. Moreover, if it concerns a delict pertaining to an allegation of sexual misconduct with a minor or a person whom the law deems as being equal to a minor, the provincial superior, or lawfully appointed delegate, must follow the civil law the criminal code of Canada, and the law of the province where the delict occurred.

The canons regarding dismissal from the Order are straightforward in their precepts. However, a complication may arise in applying them in the process of dismissal. It is noted that in recent years, Pope Francis and his predecessors have made many changes to the canons regarding the delicts by which a cleric, a religious cleric, and a religious could be removed from the clerical state or dismissed. These changes consist of incorporating various different *motu proprio* and the new Eastern penal law. They apply to all religious institutes within the Eastern Churches *sui iuris*. Therefore, the major superior must familiarize himself with the innovations, or seek assistance by calling upon canon lawyers who are cognizant of the current changes. Responding to the challenges of contemporary

society and to the documents of the Apostolic See, the Basilian Order appointed administrators within the provinces, and at the generalate level, whose role is to be vigilant in their commitment to the prevention of sexual abuse. Their responsibilities include developing general written policies on the prevention and treatment of abuse for the entire Basilian Order. The Basilian Order in Canada has, at present, approved such policies.

The serious matter of dismissal from the Order continues to be characterized by its response of evangelical charity and equity by the Order. In essence, these virtues form the basis for responsive action in relation to a member who has committed a delict. A degree of assistance for a dismissed member should be provided. This may include formal support in securing educational qualifications and skills for the job market, as well as assistance in incorporating a pension plan, covering basic expenses in a more limited way as a preventative strategy for the anticipated progression of feelings of loss, desperation, etc., which may result when a dismissed member returns to the lay state. This approach would also be helpful in avoiding any problems which may arise; such as any obstacles that could negatively influence the member, compelling him to commit even greater crimes or delicts. The interconnectedness of the ramifications of the cause and effect of the dismissal of a member clearly demonstrate a definite need to define evangelical mercy²⁵² and justice according to the specific circumstances and consequences of each case. Therefore, in consideration of the degree of complexity which exists, various approaches to establishing

²⁵² Cf. FRANCIS, *Misericordia et misera*, in *AAS*, 108 (2016), 1311-1327, in *Communicationes*, 48 (2016), 352-369.

a concrete means of supporting those who are dismissed must be incorporated in the discipline of the Order.²⁵³

A member who left the Order must be treated with evangelical mercy and justice, even if the member is found guilty of a delict reserved to the DDF. However, in many cases, repentance may be embraced and demonstrated by the dismissed member, and he may make a sincere effort to begin a new Christian life. In later life, some members who have left the Order do make positive contributions to the Order. This can be considered as an expression of equity.

²⁵³ Cf. HOLLAND, "Policies," 132.

GENERAL CONCLUSION

This study has covered the exploration of the norms of Eastern legislation, as well as the proper law of the Apostolic See, and has identified various reasons which justify the decision to dismiss a religious member from his or her religious institute, i.e., from monasteries, orders or congregations of pontifical, patriarchal or eparchial right. A member of a religious institute who commits an offence or a delict against the evangelical counsels of obedience, chastity and poverty, is unquestionably deemed to be an inappropriate representative of the vocation of consecrated life. This demonstration of the neglect of his or her obligation to embrace the evangelical counsels, compels the proper superior of the religious institute to apply the norms, which will ensure order in the Church, that:

The whole life of the ecclesial communion might be effectively ordered through faith and charity, and thereby rendered peaceful, and that this same life might in turn help bring reconciliation to all the pastors and faithful, that is, peace with God, peace among the members of the communion, and peace with all Christians and, indeed with all persons of good will. [...] For this reason, the attainment of the Council's goal requires a juridical life. [...] In fact, the juridical life is one of the pastoral helps the Church employs in leading us to salvation.¹

Eastern legislation states that a member who is found guilty can be dismissed from their religious institute whether by extra-judicial decree, which is common, or judicially. Unique to Eastern law, is the stipulation that a member involved in the process of dismissal has the right to a judicial process. He or she is able to present their case before a competent ecclesiastical judge. A member vindicates and defends his or her rights in a judicial trial,² a process conducted under the established juridical norms, both procedural and substantive.³ A judicial trial also prohibits any restrictions of a subjective nature. A

¹ PAUL VI, Allocution to the Roman Rota on Protection of Justice and the New Code of Canon Law, 4 February 1977, in *AAS*, 69 (1977), 148, English translation in WOESTMAN, *Allocutions*, 138-139.

² See *CCEO*, c. 24, §1.

³ Cf. D. CENALMOR, Commentary on c. 221, in *Exegetical Comm*, vol. 2/1, 138-139.

religious member has the right to a legal defence before a judicial trial. It is not only the right to a technical defence, it is also to respect the natural rights of a person.⁴ Following the teachings of the Second Vatican Council, in order to bring about reconciliation to the Church – peace with God, between members of the community, with all Christians and, indeed, with all persons of good will, the ecclesial authority must administer justice, which is truth. According to Saint Thomas Aquinas: “truth is the law of justice;”⁵ and this is the basis of truth which sustains personal and social life.⁶

When a religious member, in a sacred order, commits a *gravius delictum* against morals⁷ reserved to the DDF, delicts which, after the promulgation of *VP*, are a part of the norms of the *CCEO*, then the proper authority is obliged to follow the norms issued by the Apostolic See. The proper norms are *SST, 2021 Normae, VELM, Vademecum*. If necessary, the DDF will provide supplementary norms pertaining to the trial.

The member who commits *graviora delicta* causes serious harm to himself and to his religious institute. If the case warrants, that is, if the member is found guilty of committing *graviora delicta* reserved to the DDF, the proper superior may begin the process of dismissal from the religious institute. This process also applies to a religious member who is a male and is not in a sacred order, or to a female. The proper superior may begin the

⁴ See J. KRUKOWSKI, “Obowiązki i uprawnienia wszystkich wiernych chrześcijan, can. 221 [Duties and Rights of All Faithful Christians, can. 221],” in ID (ed.), *Komentarz do Kodeksu Prawa Kanonicznego, Księga II. Lud Boży [Commentary on the Code of Canon Law, Book II, The people of God]*, vol. 2/1, Poznań, Pallottinum, 2005, 38-39.

⁵ See PIUS XII, Allocation to the Roman Rota on Moral Certitude Necessary for a Judgement, no. 5, in *AAS*, 34 (1942), 342, WOESTMAN, *Allocutions*, 21.

⁶ See SCICLUNA, “The Impact of Pedophilia,” 257.

⁷ See *2021 Normae*, art. 6, in *AAS*, 114 (2022), 116, RENKEN, *Substantive Law*, 616.

process of dismissal of a member from his or her religious institute regardless of the juridical status of the institute in question.

From the day Pope Francis was elected as supreme head of the Catholic Church, he has brought about reforms, particularly in matters connected with the sexual abuse of minors by clerics and consecrated persons. The reaffirmation that the Church has the power of zero-tolerance toward these issues is primarily aimed to demonstrate the motherly face of the Church.⁸ As the Holy Father himself states:

The effective protection of minors and a commitment to ensure their human and spiritual development, in keeping with the dignity of the human person, are integral parts of the Gospel message that the Church and all members of the faithful are called to spread throughout the world.⁹

A focus, shared mutually, regarding the mission of service to the people of God, is a fundamental element required for the cooperation of all personnel involved. Bishops and religious authorities must work together to find appropriate ways of dealing with the prevention of sexual abuse of minors, in which respect for truth, charity, justice and human dignity for all must be of first and foremost significance.¹⁰

Pope Benedict XVI had made an appeal for urgent action to be taken in addressing this issue. Abuse had caused tragic consequences in the lives of victims and their families. The abuse of children and vulnerable young people by members of the Church, particularly

⁸ See THARAKUNNEL, "Sexual Abuse of Minors by Clerics," 63-64.

⁹ FRANCIS, Chirograph for the Institution of a Pontifical Commission for the Protection of Minors, 22 March 2014, in *Communicationes*, 47 (2015), 19.

¹⁰ See HOLLAND, "Religious and Bishops as Custodians of Communion," 340.

by priests and religious, “obscured the light of the Gospel to a degree that not even centuries of persecution succeeded in doing.”¹¹

The provision of appropriate norms and the diligent intent of the legislator demonstrate the purposeful endeavour of the Church to address this issue. All possible measures are being put into place to prevent a recurrence of such heinous abuses in the future, and to provide support to heal the wounds caused by these acts of abuse. Legitimate authority must be involved in order to promote the proper formation of a personal conscience,¹² because a well-formed conscience naturally agrees to uphold what is true and righteous; it perceives a principle of obedience, which obliges it to do what the law commands.¹³

At first, an analysis was presented of the canonical requirements of an extra-judicial and judicial process on the dismissal of a member from the religious institute based on the canon law and on the proper law of the Apostolic See. Subsequently, the focus was placed upon the higher authority of the Basilian Order of Saint Josaphat, in accordance with the *ROSBM*, pertaining to a dismissal of a member from the Order.

Saint Basil the Great, throughout his teachings, instructs superiors regarding the approach required in the process of rendering a decision as to the dismissal of a monk, with particular reference made to obstinate and disobedient monks:

Certainly, when someone is sluggishly obeying the Lord’s commands, it is first of all worthwhile for everyone to take pity on him as a sick member, and try to cure his infirmity by his own encouragement. But if he persevered in his defiance, and would not be corrected, he

¹¹ BENEDICT XVI, Pastoral Letter to the Catholics of Ireland, 19 March 2010, English translation https://www.vatican.va/content/benedict-xvi/en/letters/2010/documents/hf_ben-xvi_let_20100319_church-ireland.html (12 November 2025).

¹² See JOHN PAUL II, Encyclical Letter the Splendor of Truth *Veritatis splendor*, 6 August 1993, no. 75, in *AAS*, 85 (1993), 1133-1228, English translation in *Origins*, 23 (1993-1994), 319-320.

¹³ See SCICLUNA, “The Impact of Pedophilia,” 258.

should correct him more earnestly in the presence of the whole company of the brethren, and heal him with every exhortation. But if he is not affected by shame after being repeatedly admonished, and does not actually heal himself, we must cut him off from the common body as if he were his own plague, not without many tears and groans, but still as a corrupt and completely useless member, following the example of the doctors.¹⁴

A member of the Basilian Order who does not live according to the expectations of the vocation to the consecrated life, or who has committed a delict which entails dismissal from the Order, must be dismissed from the Order according to the norms of canon law, the proper law of the Apostolic See and the *ROSBM*.

Canon law reserves for the superior general the competence to adjudicate his own members, which is also confirmed in *ROSBM*, rule 519, §4. When the superior general starts a judicial process, he must act according to the statutes of the tribunal, which outline the procedure, the sequence of the trial and competence of tribunal officers. At present, no such statutes for the tribunal exist. Thus, it is a challenge for canonists within the Order to develop such statutes. Perhaps, in the near future, some statutes based on the proposition of this thesis may be submitted to the superior general for approval. At present, in order to dismiss a guilty member, the superior general is to use administrative process as it is outlined in canon law, and it is confirmed by the *ROSBM*.

¹⁴ J.-P. MIGNE (ed.), *Patrologia Graeca, St Basil the Great*, vol. 31, Stone Mountain, GA, Religion and Technology Centre, 1857, Shorter Rule 28, col. 987.

APPENDIX I

Proposal for Statutes of the Tribunal

Preamble

CCEO, canon 1074 considers that, “anyone can be brought into court before the tribunal of one’s own domicile or quasi-domicile.” The goal of the Statutes of the Tribunal of Superior General is to ensure the comprehensive and appropriate functioning of the tribunal as the judicial authority competent to adjudicate all religious members in accordance with *ROSBM*, rule, 519, §4, and serves as a response to the requirement of current church legislation. The Statutes of the Tribunal of Superior General is developed on the basis of the *CCEO*, the norms of the particular law of the Ukrainian Greek-Catholic Church, and the *Rules: The Basilian Order of Saint Josaphat*, and it is focused on norms for the practical aspects of the functioning of this tribunal.

The Basilian Order is a male clerical Order of pontifical right. It is affiliated with the Byzantine tradition and is present in various Churches *sui iuris*.¹ A distinctive feature of the Basilian Order is that the Order serves in eleven countries throughout the world, and in five Eastern churches *sui iuris*. The Basilian Order is the only Eastern clerical Order in the Ukrainian Greek-Catholic Church, the Major Archiepiscopal Eastern Church *sui iuris*.

Part One: Substantive Norms

Title One: Nature and Competence

¹ See *ROSBM*, rule 1.

Art. 1 - §1. The Statutes of the Tribunal of the Superior General exist as the set of rules approved by the superior general according to *CCEO*, c. 1070, for the organization and operation of the Tribunal of Superior General (cf. *CCEO*, c. 1493, §2).

§2. The Tribunal of the Superior General is competent to exercise the ministry of justice for the entire Basilian Order of Saint Josaphat (see *ROSBM*, rule 404, 9°):

1° the Tribunal of the Superior General is competent to adjudicate in the first instance those cases involving penal processes (*ROSBM*, rule 519, §4);

2° the Tribunal of the Superior General is the appellate tribunal of cases involving controversies between the members of the Order adjudicated in first instance by the Province (*ROSBM*, rule 519, §2).

Art. 2 - §1. The Tribunal of the Superior General is a collegiate tribunal established by the superior general.

§2. The superior general, as moderator of this Tribunal, appoints all officers, officials and personnel necessary for judicial processes by written decree (cf. *CCEO*, c. 244, §1).

Art. 3 - Amendments and additions to these statutes are to be assigned and approved by the superior general, after hearing the opinion of his councillors.

Art. 4 - §1. The acts of all sentences and decrees of the judicial processes are stored in various forms: on paper as well as digital, audio- or video formats in the archive of the General Curia (see *ROSBM*, rule 534, §3).

§2. The superior general is responsible for the protection of the acts of judicial processes and their preservation (*CCEO*, c. 259, §2; *ROSBM*, rule 410, §2).

Art. 5 - The Tribunal of the Superior General may possess its own library located in the General Curia. This library is intended to house the essential canon law literature necessary to support the tribunal officials in their judicial processes.

Art. 6 - §1. The Tribunal's activities and material support are financed from the budget of the general curia. The expenses for judicial processes are covered by the Province to which the alleged accused Religious belongs.

§2. The rates of fees for judicial services are determined by decree of the superior general.

Art. 7 - The Statutes of the Tribunal of the Superior General become effective on the date of its promulgation by decree of the superior general and publication on the main website of the Basilian Order of Saint Josaphat.

Title Two: Officers, Officials and Personnel

Art. 8 - §1. In the judicial process, the Tribunal of Superior General is composed of the following officers and officials:

1° the superior general who is *praeses* in the collegiate tribunal;

2° two judges (cf. *CCEO*, c. 1084, §1). One of the judges maybe a Christian faithful, e.g., a brother, according *CCEO*, c. 1087, §2.² One judge must be designated as *ponens* (see *CCEO*, c. 1091, §§2-4);

3° auditors (if necessary) (see *CCEO*, c. 1093);

4° experts (if necessary), (see *CCEO*, cc. 1255-1262);

² In order that the Tribunal of Superior General deals with *delicta graviora* reserved to the DDF, the DDF itself must approve this tribunal. The Tribunal of Superior General strictly follows the norm send by the DDF in accordance with *2021 Normae*.

5° the promoter of justice who is the prosecutor during the trial (*CCEO*, c. 1094);

6° the notary (*CCEO*, c. 1101).

§2. All officials are appointed on case-by-case basis.

§3. If necessary, the superior general may appoint officers and officials from other tribunals according to *CCEO*, c. 1102.

§4. If one of the officers and/or officials is unable to be present or take a part in a judicial process, the superior general follows the norm for a new appointment according to the *CCEO* (cf. *CCEO*, cc. 1090, §2, 1100, §2).

Art. 9 - §1. All the officers and officials of the Tribunal of the Superior General, as well as those who assist in it, must take an oath to fulfil their office faithfully and observe secrecy, according to the norms of *CCEO* and its Statutes. (cf. *CCEO*, cc. 244, §2, 1112, 1113).

§2. This oath is made by the officers and officials before the superior general in the presence of the general secretary of the Basilian Order. (see Appendix I)

Art. 10 - §1. The general secretary of the Basilian Order functions as the notary of the Tribunal of Superior General. If he is impeded in any manner, the superior general appoints another suitable person for this function, (e.g., it is preferable that such person holds a licentiate in canon law or who has expertise in canon law).

§2. The notary bears the following obligations:

1° to register incoming documentation, to record the acts and transactions of judicial proceedings in writing and provide this documentation to competent persons (e.g., the judges, parties involved);

- 2° to maintain an appropriate register of cases pending (in electronic and paper format) by the tribunal;
- 3° to draw up citations, trial notifications, and the like;
- 4° to ensure that documents certifying that the parties have been notified of judicial acts; these documents are added to the case files as soon as possible;
- 5° to make authentic copies of trial documents, affix appropriate seals;
- 6° to co-sign all necessary documents;
- 7° to take care to add the place and date as well as attest that copies agree with the originals;
- 8° to ensure that payments, including those due from the parties, are made on time;
- 9° to organize the archives of the Tribunal in order to compile a catalog of documents with their brief descriptions;
- 10° to organize and take care of the Tribunal's library.

Art. 11 - §1. The superior general is to approve an advocate presented by an accused person. The advocate, if not appointed by the accused member in accordance with the precepts of law, must be appointed by the superior general (see *CCEO*, cc. 1139-1148).

§2. If the advocate has committed delicts/crimes, in particular those referred to in *CCEO*, cc. 1129, §2, 1146, 1147, 1455, 1463-1465, the superior general may prohibit him from exercising his activity/responsibilities in the judicial process.

Art. 12 - Those officers or officials in a judicial process who violate the law may be punished, fined or suspended by the superior general (see *CCEO*, cc. 1463, 1464).

Part Two: Procedural Norms

Title One: General norms

Art. 13 - If the judicial process is unavoidable, the Tribunal of the Superior General follows the procedure prescribed in *CCEO* for a contentious trial or a penal judicial trial.

Art. 14 - §1. The Tribunal of the Superior General ordinarily holds its sessions at the General Curia of the Basilian Order, or, if the case warrants otherwise, the superior general may hold the trial in the province of the accused member (cf. *CCEO*, c. 1128).

§2. In regard to the period of time for the sessions, the superior general determines this, after having consulted with the other judges and hearing the parties.

Art. 15 - If an exception or suspicion is raised against any officers or officials, it is to be decided by the superior general.

Art. 16 - Mindful of the fact that the members of the tribunal are obliged to pronounce their sentence with sincerity, the superior general is to ensure that they have complete freedom in this.

Title Two: Order of the Penal Judicial Trial

Chapter One: Preliminary Investigation

Art. 17 - §1. The provincial superior, either by himself or in deliberation with another suitable person, and after consultation with the superior general, initiates a preliminary investigation in order to determine whether the accusation of the member bears a semblance of truth (see *CCEO*, c. 1468, §§1 and 3; cf. *CCEO*, cc. 984, 1074, 1093).

§2. The provincial superior is to issue a decree to initiate a preliminary investigation.

Art. 18 - The goal of the preliminary investigation is to collect proofs supporting the allegation (see *CCEO*, cc. 1468, §3, 1093, §3):

1° the proofs could include private or public documentation such as letters, written complaints, etc., (see *CCEO*, c. 1220). Private documents have probative value,

as do civil documentary – evidence. (List of delicts – *CCEO*, cc. 1436, 1437, 1442, 1453, 1458, etc);

2° the names and domiciles of any witnesses are to be recorded/indicated in this phase of investigation (see *CCEO*, c. 1233). The witnesses shall be informed that their names as well as the content of their testimony can be revealed to the accused, and that they may be asked/required to give testimony once again, should a penal judicial trial necessitate this (see *CCEO*, cc. 1233-1235);

3° the witnesses are to take an oath before and after giving their testimony, and they are to maintain secrecy concerning their depositions. All information gathered throughout the investigation must be kept secret (see *CCEO*, c. 1113, §3; cf. *CCEO*, c. 244, §2, 2°).

Art. 19 - The good name of anyone who takes part in the investigation must be protected (see *CCEO*, c. 1468, §2; cf. *CCEO*, c. 23).

Art. 20 - At the conclusion of the preliminary inquiry and later on when the trial is concluded, all the acts must be deposited in the secret archives and kept under lock and key. Ecclesiastical authorities should not disregard the juridic principle of confidentiality in penal matters (see *CCEO*, cc. 259, §2, 1113, 1470).

Art. 21 - §1. The provincial superior concludes the preliminary investigation by decree; this decree must include the reasons supporting findings as to: a) proceed with judicial process or, b) if no reasons of guilt of a member are found to end the investigation.

§2. The provincial superior sends all acts of the preliminary investigation to the superior general.

Chapter Two: Introductory Phase

Art. 22 - After the superior general receives the report of the investigation, he must decide based on the evidence whether to start a penal judicial process or not. To determine this outcome, the superior general is to consult his councillors (cf. *CCEO*, c. 1469, §3).

Art. 23 - The superior general may begin the process for a formal judicial trial. The superior general appoints a promoter of justice who presents the accusation to the superior general according to *CCEO*, cc. 1185, 1187 (see *CCEO*, c. 1472).

Art. 24 - §1. In order to prevent scandal, to protect the freedom of witnesses, and to safeguard the course of justice, the superior general can impose precautionary measures on an accused member, e.g., restricting a member from exercising ministry, or a particular office, or prohibit him from residing in the house in which he committed a delict or crime (*CCEO*, c. 1473).³

§2. These precautionary measures are issued by the superior general through a decree.

Art. 25 - §1. The superior general, in order to instruct the case, constitutes the tribunal composed of judges, a promoter of justice, and a notary (see Art. 8).

§2. In a case where the reputation of a priest is of concern, the notary must be a cleric (see *CCEO*, c. 253).

§3. This principle extends to other tribunal officers and officials (judges, promoter of justice, advocate). However, qualified Christian faithful can be appointed as an advocate for the accused member.

³ Cf. B.F. GRIFFIN, "Imposition of Administrative Leave against an Accused," in P.J. COGAN (ed.), *CLSA Advisory Opinions 1984-1993*, Washington, DC, CLSA, 1995, 487.

Art. 26 - §1. Once the superior general constitutes the tribunal, the promoter of justice presents the *libellus* (see *CCEO*, cc. 1190, 1363).

§2. The *libellus* must contain the following information (see *CCEO*, cc. 1185, 1187):

1° the name of the judge (the superior general) to whom the case is presented;

2° the matter which is clearly presented;

3° the petitioner's address;

4° the basis for the petitioner (the promoter of justice) to present the *libellus*;

5° the eventual proofs supporting the allegations.

§3. The superior general accepts the *libellus* by a decree (see *CCEO*, c. 1189).

Art. 27 - §1. The superior general cites the accused member after the *libellus* is accepted (see *CCEO*, cc. 1190, 1474; cf. *CCEO*, c. 1193).

§2. The accused member should be informed of the charges against him (see *CCEO*, c. 1486, §1). He should then be invited to appear before the tribunal.

§3. If the accused member refuses to appear or does not provide a legitimate reason for his absence, he is considered to have renounced the exercise of his right to defence in the process initiated by the superior general (see *CCEO*, c. 1274).

§4. The superior general should indicate in the decree of citation the time, the date and the place for interrogation. The decree of citation should be duly signed and sealed by the superior general and co-signed by the notary.

§5. A copy of the *libellus* should be attached to the citation.

Art. 28 - §1. Citation to trial, decrees, judgments and other judicial acts shall be communicated by postal services with a record of delivery required or in another manner to ensure delivery and acceptance of the correspondence (see §4) (see *CCEO*, c. 1192).

§2. The method of delivery of the above documents must be indicated in the acts of the trial.

§3. A party who refuses to accept a citation or avoids delivery of a registered letter is considered to have been legally notified and summoned (see *CCEO*, c. 1191, §3).

§4. The citation or notification referred to in article, §1, may, at the superior general's discretion, also be made:

1° through a courier service appointed by the superior general;

2° by telephone call, e-mail, or other current means of communication which are certain and guarantee the confidentiality of correspondence, and which must be accompanied by a written document signed by the superior general or the *ponens* and co-signed by the notary.

§5. When it is impossible to identify the place of the current residence of an accused member, after the appropriate search, all official information that, by law, must be delivered to the accused shall be sent to the address of the monastery of his last known residence.

§6. The accused member whose absence is declared by decree, according to *CCEO*, c. 1272, must be notified of the contents of this decree, as well as notification of the publication of the acts and in due time the sentence.

Art. 29 - §1. The accused member has the right to choose an advocate within a determinate length of time established by the superior general for the trial (see *CCEO*, c. 1474).

§2. If, however, the accused member fails to choose an advocate within the designated time, the superior general must appoint one before the *contestatio litis* (see *CCEO*, c. 1139).

§3. The denial of the right of defence will result in irremediable nullity of an eventual decision (see *CCEO*, c. 1303, 7°).

Art. 30 - An advocate:

1° should carefully study the procedure/process followed in the preliminary investigation, and identify and report any exception or objection against perceived defects;

2° may assist during the examination of witnesses unless otherwise prohibited (see *CCEO*, c. 1240);

3° can propose questions to be asked of the witnesses (see *CCEO*, c. 1242);

4° has the right to inspect the acts when they are published (see *CCEO*, c. 1281, §1);

5° may speak on behalf of the accused (see *CCEO*, c. 1478);

6° may initiate recourse against an administrative decree (see *CCEO*, c. 1003).

Art. 31 - §1. If the accused member does not respond within the time prescribed in the first citation, the superior general will issue another decree of citation with a prescribed period of time to respond to this new citation.

§2. A copy of the *libellus* should be attached to the new citation.

Art. 32 - §1. The superior general is to define the joinder of issue by decree (see *CCEO*, c. 1195).

§2. If the parties (accused member or officials) disagree with the superior general's decree of the joinder of issue, ten canonical days are provided to introduce a recourse against it. This recourse must be settled by the superior general expeditiously (see *CCEO*, c. 1195, §3).

§3. The joinder of the issue must address three important points:

- 1° whether the accused committed the delict or crime;
- 2° whether the causes are grave and culpable on his part;
- 3° whether, based on the outcome of the trial, extra-judicial dismissal from the Basilian Order is sufficient, or whether another penalty should be imposed.

§4. The joinder of issue can be changed validly according to *CCEO*, c. 1196.

Art. 33 - §1. Renunciation of the Instance:

- 1° the accused member cannot renounce a judicial trial in a penal case;
- 2° the promoter of justice can renounce a trial (see *CCEO*, c. 1205). However, if the promoter of justice wishes to renounce a case, the accused must, for validity, give his consent to it (see *CCEO*, c. 1475);
- 3° the superior general must accept it (see *CCEO*, c. 1205, §3).

§2. The trial is suspended for the reasons outlined in *CCEO*, c. 1199.

Chapter Three: Instructional Phase

Art. 34 - §1. Facts, data and proofs of the case should be collected and juridically accepted during the instructional phase of the case (see *CCEO*, cc. 1207-1219).

§2. The promoter of justice presents proofs gathered during the preliminary investigation.

§3. The accused member is given an opportunity to present the truth from his perspective.

§4. The accused member cannot be placed under oath. *CCEO*, c. 1471, §2 states: “The accused is not bound to confess the offence and cannot be asked to take an oath.”

Art. 35 - §1. A judicial confession is a statement given by either party which consists of factual matters pertinent to the issues being investigated. It is made before the judge either orally or in written form during a judicial trial (see *CCEO*, c. 1216).

§2. In order to be recognized juridically, the judicial confession must not have been given by the accused under the use of force (see *CCEO*, c. 1219) or grave fear (see *CCEO*, c. 932, §2). Unlike a contentious process (see *CCEO*, c. 1217, §1), a judicial confession in a penal process does not free the tribunal from the burden of proof. This judicial confession has only limited probative value which is to be determined by the superior general (see *CCEO*, c. 1536, §2) and corroborated by other elements gathered during the trial (see *CCEO*, c. 1218).

Art. 36 - The second source of evidence gathered in a trial is documentary evidence (see *CCEO*, cc. 1220-1227). The promoter of justice, the accused or his advocate, or the witnesses can submit documentary evidence during the instructional phase within a stipulated period of time (see *CCEO*, c. 1225).

Art. 37 - Documentary evidence is of two types: public and private (see *CCEO*, c. 1220):

1° a public ecclesiastical document is one that is drawn up by a public person in the exercise of his or her office in the Church (see *CCEO*, c. 1221);

2° a private document is one written or signed by private persons. The private document includes diaries, letters, and articles found in various social communication media.

Art. 38 - §1. The judges examine the documentary proofs and admit them to the trial after verifying their authenticity and credibility (see *CCEO*, c. 1225).

§2. In a case where evidence of any tampering with documents is present, the superior general is to ascertain this fact before admitting such evidence as proofs (see *CCEO*, c. 1224).

Art. 39 - §1. The third source of proof gathered by judges in a trial is the testimony of the witnesses (see *CCEO*, cc. 1228-1254).

§2. While the accused member may not be present at the interrogation, his advocate may attend unless the superior general decides otherwise (see *CCEO*, c. 1240).

§3. The judges must interrogate with discretion, i.e., interviewing only those persons whom they believe to have sufficient knowledge pertaining to the delict/crime and its imputability:

1° everyone who has sufficient knowledge regarding the delict/crime can be called on as a witness unless forbidden by law;

2° summons to witnesses must be made by decree;

3° the witnesses are to tell the truth and nothing but the truth (see *CCEO*, cc. 1229, 1243), and are to respond to the questions of the judge, except in specific instances;

4° in order to be impartial, witnesses who have knowledge favourable to the accused must also be summoned.

§4. Given the circumstances of objectivity in which the Basilian Order serves, as an exception, the superior general may allow the interrogation of witnesses via video link – provided that the confidentiality and secrecy of the interrogation are observed and ensured.

Art. 40 - §1. At the beginning of the interrogation, the superior general should make it clear to the witnesses that their names may be disclosed to the accused member; if the witnesses do not wish to have their names revealed to the accused, they are not to be heard (see *CCEO*, c. 1235).

§2. The superior general must first establish the identity of the witnesses and their relationship to the parties (see *CCEO*, c. 1244).

§3. The witnesses are to be interrogated separately (see *CCEO*, c. 1241, §1) by the judges, or by their delegate or by an auditor (if they take part in the trial) with the assistance of the notary (see *CCEO*, c. 1242).

Art. 41 - The questions to be asked are to be chosen discretely by the superior general (see *CCEO*, c. 1244):

1° the questions should be brief and appropriate to the understanding of the person interrogated;

2° the questions are not to be communicated in advance (see *CCEO*, c. 1246, §1);

3° the questions should not be deceptive nor leading (see *CCEO*, c. 1245).

Art. 42 - §1. Statements of individuals must always be given under oath and should be recorded in a written format immediately by the notary (see *CCEO*, c. 1248, §1).

§2. Statements of individuals must be duly signed by the witnesses and the notary (see *CCEO*, c. 1250, §1).

§3. The notary must record all significant information shared in the merits of the case (see *CCEO*, c. 1249).

§4. The superior general has the discretion to order the re-examination of a witness either *ex officio*, or at the request of the accused member or his advocate (see *CCEO*, c. 1251). Witnesses are to maintain secrecy throughout the process.

Art. 43 - §1. An expert report or opinion constitutes another source of evidence (see *CCEO*, cc. 1255-1262).

§2. The superior general may decide to make use of the assistance and opinion of experts whenever, in his prudent judgement, it will help him arrive at moral certitude, and also when the law prescribes such use of experts (see *CCEO*, c. 1255).

§3. An expert can be appointed by the superior general (see *CCEO*, c. 1256), as suggested by the parties and accepted by the superior general (see *CCEO*, c. 1262).

§4. The parties or their legal representatives have the right to receive knowledge of the names of the experts before they are appointed or interviewed as well as the subject matter of the expert testimonies/(examinations).

Art. 44 - §1. The appointment of experts should be based on their knowledge of the subject matter, reputation, personal integrity and honesty.

§2. The expert's opinion should indicate the particular theory or principle through which a particular conclusion is arrived at, or upon which the arguments are built.

Art. 45 - The accused member at his defence, should be given access to the reports of experts.

Art. 46 - In the process of pronouncing a decision, the superior general should explain the grounds on which he either accepts or rejects the conclusions of the experts (see *CCEO*, c. 1260, §2). An expert's opinion cannot be considered a judgement in a case.

Art. 47 - §1. If the superior general considers that leaving the premises to travel to a location to inspect something which is relevant to the case is advisable in order to clarify a specific matter pertaining to the case, he must order this by decree. After listening to the concerns of the parties, he will describe what it is that needs to be inspected, indicating the place to travel to, the date and the time of the meeting; the superior general must then summon all those involved in the controversy (see *CCEO*, cc. 1263-1264).

§2. The notary should record the names of the individuals present at the inspection and summarize the comments made or arguments presented. At the conclusion of the inspection process, this summary should be read by all parties present so that clarifications or corrections may be made; consequently, the summary should be signed by those present. The evaluation of the inspection is left to the superior general.⁴

Art. 48 - §1. The superior general can formulate any presumptions⁵ that are not established by the law itself as long as they are based on a certain and determined fact directly connected with the matter of dispute (see *CCEO*, c. 1265).

§2. A presumption is thus a conjecture made in light of the law or personal experience by a judge about the possible existence of a disputed or unknown fact. It is based on

⁴ See K.E. BOCCAFOLA, Commentary on c. 1583, in *Exegetical Comm*, vol. 4/2, 1347.

⁵ "A presumption is a probable conjecture about an uncertain matter; a presumption of law is one which the law itself establishes; a human presumption is one which a judge formulates" (*CIC*, c. 1584).

reasoning and the experience of an individual, and it operates on a level of probability; it does not provide full certainty about a controversial matter.

§3. A person who has a favourable presumption of the law is freed from the burden of proof. It is for the other party to prove the contrary (see *CCEO*, c. 1266).

Art. 49 - §1. If an incidental case arises, the superior general must decide whether the incidental question seems to have foundation and connection with the principal case or, rather should it be rejected at the outset (see *CCEO*, cc. 1267-1271).

§2. If an incidental question is allowed to be decided, it must be decided by an interlocutor sentence or decree.

§3. If the incidental question must be resolved by sentence, the norms of the summary contentious process are to be observed (see *CCEO*, cc. 1267-1271, 1343-1356).

§4. There is no room for appeal from the decree of a judge or an interlocutory sentence which does not have the strength of a definitive sentence. The interlocutory question may be joined with an appeal from a definitive sentence (see *CCEO*, c. 1310, 4°; cf. *CCEO*, c. 1301).

Art. 50 - §1. When all the evidence, such as declarations of the parties, testimony of witnesses, documentary proofs, and experts' opinions, have been collected, the superior general must, under pain of nullity, publish the acts in which he specifies the method of notification of all parties (see *CCEO*, c. 1281, §1; cf. *CCEO*, c. 1303, 7° – the denial the right of defence).

§2. Through a decree, he must allow the accused and/or their advocate to inspect the acts⁶ which are not as yet known to them.

Art. 51 - Once the publication is completed, the accused member and his advocate(s) may submit new supplementary proofs and evidence to the acts. The superior general, if he deems it appropriate, in consideration of their importance/significance and value, can again publish these supplemental acts (see *CCEO*, c. 1281, §2).

Art. 52 - §1. Where a just cause exists, after hearing both the promoter of justice and the accused member, the superior general can extend the time limit (see *CCEO*, c. 1124), which was agreed upon by both parties, either to present additional allegations or defence material.

§2. The superior general is to avoid unnecessary delay in the trial. The decree of conclusion merely states that the case has moved forward to its conclusion and it includes an explanation of how the decision for concluding the case was arrived at (see *CCEO*, c. 1284).

Chapter Four: Concluding Phase

Art. 53 - §1. Once the case is sufficiently instructed as per the law, the case enters the discussion phase, which allows discussion between the judges, the promoter of justice and the accused's advocate. At this point, the promoter of justice, the accused and the advocate, if satisfied with the trial thus far, cease submitting further evidence and allow the superior general to proceed to a decision (see *CCEO*, c. 1282, §1).

§2. The conclusion of the case may occur in three different ways:

⁶ The legislator says *acts*, the term includes both the *acta causae* and the *acta processus*, relating to the merit and the procedures of the trial. See *CCEO*, c. 1131.

1° the parties themselves can renounce submission of further proofs, and declare that they have nothing to add;

2° it can occur by the lapse of the time-limit stipulated by the superior general for submission of proofs;

3° by the declaration of the superior general that the case has been sufficiently instructed (see *CCEO*, c. 1282, §2).

§3. The superior general issues a decree that the conclusion of the case has been completed (see *CCEO*, c. 1282, §3).

Art. 54 - §1. After the case has been concluded, the superior general is to determine a suitable period of time (time limit is extendable either *ex officio* or at the request of the advocate or the promoter of justice), but the superior general has to hear the other party on this matter (see *CCEO*, c. 1124, §2) for the presentation of pleadings and observations (to recapitulate arguments, to offer additional evidence, and to refute the charges against the accused).

§2. The superior general is to determine a reasonable amount of time for the submission of observations by the promoter of justice (*votum pro rei veritate*) and defence briefs by the accused member and his advocate(s) (*defensiones*) in writing (see *CCEO*, c. 1284).

§3. The superior general could also decide to have an oral discussion in place of a written submission (see *CCEO*, c. 1285, §1).

Art. 55 - §1. After the pleadings and observations have been exchanged, each party can formulate and submit its reply (it is an opportunity for the parties to put forth their final

arguments on issues that were raised in the process of the trial) within a brief period of time determined by the superior general (see *CCEO*, c. 1286, §1).

§2. A decision as to the manner in which the discussion will be held: a) in written format or, b) orally is left to the discretion of the superior general:

1° the opinion of the legislator is that it should be done in writing;

2° if an oral discussion is to be held, the prior consent of the parties is necessary (see *CCEO*, c. 1285, §1; cf. *CCEO*, c. 934, §2, 1° – invalid);

3° at an oral discussion, a notary should be present, as the pleadings discussed should be recorded in written form (see *CCEO*, c. 1288); the conclusions arising out of the oral discussion should be signed by all.

Art. 56 - §1. *CCEO*, c. 1286, in order to protect the integrity of justice from unjust and unnecessary delays, only one rejoinder for the parties will be permitted, although the superior general, in his discretion, can allow a second rebuttal if a grave cause exists (see *CCEO*, c. 1286, §2).

§2. In penal cases it is the accused member who speaks last (see *CCEO*, c. 1478). Strict secrecy is to be imposed by the superior general in penal matters.

Art. 57 - §1. To discuss the case in order to reach moral certitude, and to render a decision, the judges gather together in the Tribunal office, i.e., the General Curia. Moral certitude depends upon the objective evaluation of the evidence by the judges, supported by experts' opinions and their own judicial experience.

§2. The superior general is to establish the date and time for deliberation (see *CCEO*, c. 1292, §1).

§3. Given the objective circumstances in which the Basilian Order of Saint Josaphat serves, it is also permissible for judges to meet to discuss the circumstances of the case and render a decision via zoom meeting, in accordance with the regulations of this article, §4.

§4. The judges, both individually and without indicating their names:

- 1° submit, in Ukrainian written format (permitted in the language of an accused member, or Italian), their conclusions on the merits of the case and the reasons, both in law and in fact according to their own conscience (see *CCEO*, c. 1292, §2);
- 2° present their conclusions in the order of the process of the trial beginning with the *ponens* of the case. The discussion then follows under the leadership of the superior general to determine what must be declared in the dispositive part of the sentence (see *CCEO*, c. 1292, §3).

§5. Discussions must be kept secret; no one except the judges may be present at the discussions.

§6. In the discussion each judge has the right to retract his (or her) original conclusions, in part or in its entirety, and to adhere to the opinion of one or more of the other judges. However, a judge who does not wish to accede to the decision of the others, can demand that his conclusions be transmitted to the higher tribunal if there is an appeal (see *CCEO*, c. 1292, §4).

§7. Based on the written opinions of the judges, which they presented and discussed:

- 1° the *ponens* writes the judgement following *CCEO*, c. 1293, §3;
- 2° the *ponens* composes the judgement in light of the *vota* of the other judges. In the absence of *vota*, he must prepare the sentence using the reasons that emerged during the discussion;

3° the sentence presented by the *ponens* must be approved by all the judges constituting the panel (see *CCEO*, c. 1293, §2);

4° once the sentence is approved, all the judges and notary sign it. In the absence of these signatures the sentence suffers from the defect of remediable null (see *CCEO*, cc. 1295, §4, 1304, §1, 3°).

Art. 58 - §1. If the judges are unwilling or unable to arrive at a sentence in the first discussion, the decision can be deferred to another meeting but not beyond one week, and is recorded with the following: “*The final conclusion will be made at the next meeting of the judges...*” (see *CCEO*, c. 1292, §5).

§2. When the discussion is completed according to *CCEO*, c. 1479, §1, the definitive judgement should be issued, “no more than one month from the day on which the case was decided” (*CCEO*, c. 1293, §3). (The law allows the collegiate tribunal to set a longer period for a grave reason.)

Art. 59 - §1. A judge arrives at moral certitude, which excludes all reasonable doubt, when he commits himself to truth and justice with prayerful conviction (cf. *CCEO*, c. 1295, §1).

§2. The objective evaluation that helps a judge in his arriving at moral certitude does not exclude him from pronouncing a sentence favourable to the accused. When a judge is unable to arrive at moral certitude that the claim of the promoter of justice is established, the law requires the judge to pronounce a sentence in the negative, i.e., absolving the defendant of the accusation.

§3. At any stage of the trial, if it becomes evident that a delict/crime has not been perpetrated, the judge is obliged to declare it in a sentence and acquit the accused (see *CCEO*, c. 1482).

Art. 60 - §1. The sentence should be formulated as per *CCEO*, c. 1295:

1° invoking the Divine Name;

2° expressing in sequence who the judges of the tribunal are;

3° parties in the tribunal (the promoter of justice, the accused member, the procurator (if he takes part) and the notary, with the names and domiciles correctly indicated;

4° briefly report the alleged facts together with the conclusions of the parties and the formulation of the doubt;

5° the dispositive section of the sentence preceded by the reasons on which it is based (see *CCEO*, c. 1304, §1, 2° – remediable null): *in facto, in iure, species facti* and judgment;

6° method of notification and right of appeal;

7° indication of the day and place where it was rendered;

8° the signatures of all judges, and the notary;

9° determination of judicial expenses.

§2. The sentence must decide (see *CCEO*, c. 1294):

1° the controversy raised before the tribunal, giving appropriate response to the questions posed in the *contestatio litis*;

2° if there is proof with moral certitude, that the accused member committed the delict/crime and the decision is affirmative, the sentence must address the question concerning “imputability, malice and culpability”;

3° the imposition of the sentence. The tribunal may impose some penalties according to norms of the *CCEO*.⁷ The tribunal cannot directly and immediately place a perpetual penalty on the accused member before imposing other recommended penalties and remedies;

4° “[a]ccording to the ancient traditions of the Eastern Churches, penalties can be imposed that require some serious work of religion or piety or charity to be performed, such as certain prayers, a pious pilgrimage, a special fast, alms, spiritual retreats. Other penalties are to be imposed on that person who is not disposed to accept these penalties” (*CCEO*, c. 1426, §§1-2).⁸

Art. 61 - §1. The sentence is drawn up in two identical copies, each having equal legal efficacy. One copy of the sentence is kept in the case file, the other is given to the accused member. From the signed copies of the sentence, the notary is to make the necessary number of authentic copies and send them to those parties who are entitled to receive them, in accordance with the law (see *CCEO*, c. 1298).

⁷ If the tribunal adjudicated a case reserved to the DDF, the tribunal must have a prior authorization from the DDF to impose a penalty of removal from the clerical state.

⁸ Other penalties for example: deprivation of active and passive voice, deprivation of all or some functions exercised in the religious institute, prohibition of abstention from the religious house, limitation of correspondence or use of the means of social media or other electronic communication such as the use of the telephone, or even a requirement to pass examinations in certain subjects. See D. BOREK, “La costituzione e l’applicazione delle pene canoniche negli Istituti Religiosi clericali di diritto pontificio secondo CIC 1983,” in *Annuario Iuris Canonici*, 1 (2014), 112.

§2. The parties entitled to receive signed copies of the sentence may be notified of the dispositive part of the judgement beforehand (see *CCEO*, c. 1297).

§3. Communication of the sentence can be transacted in the tribunal office in person, in the Province of the accused member, or sent by certified mail to the accused member with a request for acknowledgement of the receipt of notification (see *CCEO*, c. 1298).

Art. 62 - Any material error or error in calculation must be corrected by the judge *ex officio* or at the request of the parties, which is to be addressed and completed prudently after the parties have been heard, and a decree to this effect should be appended to the judgement (see *CCEO*, c. 1299).

Art. 63 - The sentence is to be communicated as soon as possible indicating the time in which an appeal of the sentence can be lodged (see *CCEO*, c. 1297).

Art. 64 - §1. The parties who consider themselves aggrieved, both the accused and the promoter of justice, can appeal against the sentence before the judge (the superior general) who pronounced the sentence within fifteen useful days from the notification of the publication of the sentence (see *CCEO*, c. 1311; *CCEO*, c. 1544, §2 – useful time).

§2. The superior general may extend the time limit to thirty useful days (see *CCEO*, c. 1124, §2; cf. *CCEO*, c. 501, §2).

§3. The accused can appeal not only against an affirmative sentence, but also against a sentence which has exonerated him (see *CCEO*, c. 1481, §1).

§4. An appeal suspends the execution of a sentence (see *CCEO*, c. 1319).

§5. For the appeal to proceed, it is required that:

1° a written request for an appeal be submitted;

2° the factual and legal grounds for the appeal are stated;

3° an authentic copy of the sentence included.

Art. 65 - The superior general is obliged to send the appeal request, together with an authentic copy of all the acts of the case, to the Apostolic See (see *ROSBM*, rule 519, §2).

Art. 66 - §1. If an appeal has not been requested within the prescribed time, then the right to appeal is considered extinguished.

§2. If the person is legitimately impeded from lodging an appeal, the useful time is calculated from the time he is freed of the impediment.

Art. 67 - If the appeal has not been lodged by an accused member, the superior general either *ex officio* or at the request of the promoter of justice may execute the judgement through a decree.

Art. 68 - Concerning an adjudged matter which is not subject to appeal, the accused member can lodge a complaint of nullity following the norms of *CCEO*, cc. 1303-1308.

Art. 69 - §1. The superior general, personally, or through the provincial superior executes the sentence of the tribunal through a decree of execution.

§2. This decree can be either included in the sentence or issued separately (see *CCEO*, c. 1338).

§3. In the case of an appeal, the superior general, personally, or through the provincial superior executes the definitive sentence of the appeal tribunal (see *CCEO*, c. 1340, §3; see *ROSBM*, rule 534, §1).

Art. 70 - §1. After the case is concluded by sentence or decree, the superior general prepares a list of judicial expenses and fees related to the work of the competent persons. He sends this decision to the accused member's Province.

§2. If a legal advocate(s) was involved in the case, the superior general requests a list of expenses related to his work. This list of expenses must be supported by financial documents: tickets, checks, receipts, etc.

§3. The amount of remuneration for experts' expenses and any other personnel who participated in the process is established by the superior general in prior consultation with his councillors.

§4. The superior general determines the amount of compensation for the parties during the process (see *CCEO*, c. 1335, 4°-5°).

Art. 71 - The superior general, taking into account the Province of the member and its financial capabilities, may exempt the Province in whole or in part from paying the trial costs. The remaining part is paid from the budget of the general curia.

Chapter Five: Consequences of the Process

Art. 72 - After the judicial process is completed, the superior general is to decide whether a member should be dismissed from the Basilian Order of Saint Josaphat, or whether the punishments imposed in the sentence are sufficient.

Art. 73 - In order to dismiss a member from the Order, the superior general is to follow the norms of canon law and the *ROSBM* on dismissal from the Order (see *CCEO*, cc. 500, 553, *ROSBM*, rules 533, 534).

Art. 74 - §1. If the accused member feels aggrieved by the decree of dismissal, he can make recourse or lodge a request that the case be handled judicially to the higher instance (the Apostolic See) following the norms of canon law and the *ROSBM* (see *CCEO*, cc. 501, §2, 553, *ROSBM*, rule 534, §2).

§2. A recourse or request for judicial process suspends the execution of the decree. The member remains a member of the Basilian Order of Saint Josaphat until the Apostolic See makes a final decision.

Art. 75 - A cleric who has been legitimately dismissed from the Basilian Order of Saint Josaphat cannot exercise sacred orders until he secures a place in the church of a benevolent eparchial Bishop who welcomes him into his eparchy (see *CCEO*, c. 502; *ROSBM*, rule 535, §1).

Art. 76 - A member who has been legitimately dismissed cannot make any claim against the Basilian Order; however, charity and equity are to be observed on his behalf (*ROSBM*, rule 535, §2).

Appendix I

Oath of Office of the Tribunal

I, *FIRST AND LAST NAME*, accepting the office of *NAME*, do hereby swear in the name of the Holy Trinity before the Superior General to be faithful to the principles of justice and equity, to discharge my duties faithfully, and to maintain professional secrecy within the limits and in accordance with the manner prescribed by the Code of Canons of the Eastern Churches, the Particular Law of the Ukrainian Greek-Catholic Church and the Statute of this Tribunal.

In this, help me, O Holy God, through the prayers and intercession of the Blessed Virgin Mary and all the saints.

City, Day, Month, Year

SIGNATURES:

- person who took the oath;
- the Superior General.

*Appendix II**Tribunal staff questionnaire*

1. Photo 3x4
2. Full name
3. Date and place of birth
4. Date of ordination to the priesthood
5. Education (JCL, JCD)
6. Judicial Experience
7. Residential address, telephone number and e-mail address
8. Date and Signature

APPENDIX II

**App. I/2 – Declaration valid for civil purposes made by the candidate to the
introduction to Basilian consecrated life**

I, the undersigned, born on (date)....., at (place), son of (first and last name of father) and (first and last name of mother), identification document (passport or other): series/no., issued at (place), on (date), by (authority issuing the document),

with reference to my request to be admitted to the introduction to Basilian consecrated life, hereby declare that I will not, in any way, seek any type of compensation for any work I do during the course of introduction to Basilian consecrated life, in conformity with the Statute of the Basilian Order of St. Josaphat.

I make this declaration, being fully cognizant of all its civil effects.

Place, day/month/year

Signature of the candidate to the introduction to Basilian consecrated life

Signatures of two Basilian witnesses of perpetual profession

APPENDIX III



CONGREGATIO
PRO ECCLESIIS ORIENTALIBUS

Dicastero dal 5 giugno 2022

Prot. N. ██████████2004

20 agosto 2024

00193 Roma
Via della Conciliazione, 34
Indirizzo postale: 00120 Città del Vaticano

PROTOCOLLUM PROTOARCHIMANDRITAE
Attiv.
N .. 329/24 ..
Class.

Reverendissimo Padre,

Con cortese lettera N. 297/24 del 17 luglio scorso, Ella, in qualità di Protoarchimandrita dell'Ordine Basiliano di S. Giosafat, ha informato di aver emesso il Decreto di dimissione nei confronti del P. ██████████, religioso della Provincia di S. Stefano in Ungheria, con la trasmissione degli atti.

Questo Dicastero, pur non essendo più obbligato alla conferma (cfr modifica del Can. 501 del CCEO avvenuta con il *Motu proprio Expedi ut iura* del 2 aprile 2023), dopo attenta valutazione del suddetto documento, prende atto della correttezza della procedura seguita, non avendone riscontrato irregolarità.

Profitto della circostanza per confermarmi con sensi di religioso ossequio,

Suo dev.mo

Claudio Card. Gugelotti
Prefetto

✱ Michel Jalakh, oam
Arcivescovo Segretario

Reverendissimo Padre
P. Robert Roman LISSEIKO, O.S.B.M.
Protoarchimandrita - Superiore Generale
dell'Ordine Basiliano di San Giosafat
Via S. Giosafat, 8
00153 ROMA

APPENDIX IV



**DICASTERO
PER LA DOTTRINA
DELLA FEDE**

00120 Città del Vaticano
Palazzo del S. Uffizio

29 marzo 2021

PROT. N. 8 /2019 - 940

RISERVATA

Reverendissimo Padre,

con la presente, Le scrivo riguardo al caso del Rev. _____, Ieromonaco della Provincia _____ del Suo Ordine, accusato del delitto di cui all'art. 6, 1° SST, che è stato trovato colpevole e sanzionato, il 14 _____ 2021, con la deposizione dallo stato clericale, decisione confermata mediante Decreto di questo Dicastero il 6 luglio 2021.

È stato ricevuto e studiato il Ricorso ex art. 24 SST, inoltrato dal Rev. _____, con l'ausilio del suo avvocato canonico. Tuttavia, lo stesso risulta inammissibile per il motivo di essere arrivato in questa sede fuori del termine perentorio di sessanta giorni utili, computati dalla notificazione del menzionato Decreto di questo Dicastero.

In questo modo, la decisione di imporre all'accusato la pena di deposizione dallo stato clericale è da considerarsi *tamquam res iudicata* ed esecutiva. Da quanto riferito, che segna la conclusione dell'iter processuale, Le chiedo di voler notificare al Rev. _____ e al suo patrono, dandone notizia a chi di diritto. Una copia del verbale di notificazione sia gentilmente inoltrato a questo Dicastero.

Si rammenta che l'eventualità di una dimissione dell'accusato dall'Ordine Basiliano di San Giosafat, secondo quanto stabilito nel *can. 553 CCEO*, è di competenza del Superiore Generale.

Nel significarLe quanto sopra, profitto della circostanza per confermarmi con sensi di distinto ossequio,

dev.mo nel Signore

Luis F. Card. LADARIA, S.I.

Prefetto

Moderatore del Collegio per l'esame dei Ricorsi

Rev.mo Protoarchimandrita
P. Robert Roman LISSEIKO, O.S.B.M.
Curia Generalizia dei PP. Basiliani di San Giosafat
Via San Giosafat, 8
00153 ROMA

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BIOGRAPHICAL NOTE

Damian Mykhaylo Dutka, OSBM, was born in Kemerovo, Russia on 22 July 1977. In 1981, he and his family returned to the country of origin of his mother, Ukraine. In 1994, he entered the Basilian Order of Saint Josaphat (Basilian Fathers) in Ukraine. He professed a first temporary profession in 1996 and a perpetual profession in 2002. He was ordained a priest on 29 April 2003, in Saint George's Cathedral, Lviv, Ukraine.

After a year (2003-2004) of studies at the Pontifical Biblical Institute, Rome, Italy, Damian Mykhaylo Dutka, OSBM, opted to work in the parishes of the Basilian Order province in Canada. In 2005, he was an assistant pastor at Saint Basil the Great Ukrainian Catholic Parish in Edmonton, Alberta. In 2005-2012 – an assistant pastor at Saint Nicholas Ukrainian Catholic Parish in Winnipeg, Manitoba, where he fulfilled the duty of a chaplain for Ukrainian Catholic Women's League. In 2013-2019 – an assistant pastor at Saint John the Baptist Ukrainian Catholic Shrine in Ottawa, Ontario. Since 2014, he has been an editor of the Ukrainian-English periodic, *Almanac Svitlo (The Light)*.

Damian Mykhaylo Dutka, OSBM, holds a Bachelor's degree in Theology from Saint John the Baptist Seminary in Warsaw, Poland (2003), a Master's degree in Canon Law from the University of Ottawa (2019), and a Licentiate in Canon Law from Saint Paul University, Ottawa (2019). He began his Ph.D. and doctoral programme at Saint Paul University in 2019. From September 2019 to February 2024, he was the pastor of Holy Trinity Parish in Vegreville, Alberta, served by the Basilian Order. In 2020, he was elected a councillor to the council of the provincial superior and appointed a superior in the Basilian Fathers Monastery in Mundare, Alberta. When some parishes requested, he preached at retreats. From the middle of 2021 to October 2022, he was assigned a judge of

a penal judicial trial to the Tribunal of the Ukrainian Eparchy of Toronto and Eastern Canada.

During the last provincial chapter, 2024, which was held in Vancouver, he was elected the provincial superior in Canada. His office is located in Winnipeg, where he also has the opportunity to perform pastoral duties at Saint Nicholas Ukrainian Catholic Parish. As the provincial superior, he is a member of the presbyteral council and the college of eparchial consultors in Archeparchy of Winnipeg, the Ukrainian Greek-Catholic Church.