# Violation of Liturgical Laws and Penal Sanctions

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## Introduction

According to Saint Thomas Aquinas, law is "an ordinance of reason for the common good, made by him who has care of the community, and promulgated."[2] The four important elements of this definition are that a law must be (1) reasonable, (2) it must be for the common good; (3) it must be promulgated; and that (4) the promulgation must be done by the one who has the authority over the community.

Regarding liturgical laws, CCEO c. 3 stipulates thus: "The Code, although it often refers to the prescripts of liturgical books, does not for the most part determine liturgical matters; therefore, these prescripts are to be diligently observed, unless they are contrary to the canons of the Code." In short, the liturgical laws found in the liturgical books do have the same binding force as the canons

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[2] *Summa Theologiae*, I-II, 90.4.

of CCEO and CIC and they too must be obeyed as they too are for the common good.

Regarding the approval of liturgical texts, CCEO c. 657, §1 has stipulated as following: "The approval of liturgical texts, after prior review of the Apostolic See, is reserved in patriarchal Churches to the patriarch with the consent of the synod of bishops of the patriarchal Church…" By virtue of CCEO c. 152, "what is stated in common law concerning patriarchal Churches or patriarchs is understood to be applicable to major archiepiscopal Churches or major archbishops…"

Once the competent authority of a Church *sui iuris* approves a liturgical text, that approval is not only for the prayers in that liturgical text, but also for the rubrics printed in it, and by liturgical laws what are intended are the rubrics together with the liturgical text,[3] because by definition, "Divine Liturgy" includes not only the approved prayers, but also the approved actions: "Divine worship, if carried out in the name of the Church by persons legitimately appointed for this and through acts approved by the ecclesiastical authority, is called public; otherwise, it is called private" (CCEO c. 668, §1). Repeating the teachings of the Second Vatican Council in this regard (SC 22 §3),[4] CCEO c. 668 §2, therefore, reiterates that "no other person can add to, remove, or modify that which was established by this authority." The clause "the acts approved by the authority" means that to be a lawful act of public divine worship, the celebrant must follow faithfully not only the prayers in the liturgical text, but also the rubrics in the liturgical text and the rubrics specify the position, orientation, and gestures of the celebrant. Whatever is given in the liturgical text is obligatory for the celebrant to follow unless the

[3] Liturgical law indicates what is to be said, where it is to be said and how it is to be said and celebrated.

[4] SC 22 §1: "Regulation of the sacred liturgy depends solely on the authority of the Church, that is, on the Apostolic See and, as laws may determine, on the bishop. … §3: Therefore, absolutely no other person, not even a priest, may add, remove, or change anything in the liturgy on his own authority."

rubrics clearly stated any of it as optional or unless the celebrant has obtained in indult of dispensation from observing that norm.

According to CCEO c. 150, §2, "Laws enacted by the synod of bishops of the patriarchal Church and promulgated by the patriarch, have the force of law everywhere in the world, if they are liturgical matters…" From the above premises, it is evident that liturgical laws given in the liturgical books are to be followed by everyone who celebrates Divine Liturgy of any Church *sui iuris*.

**1. The Notion of Delicts and Penalties**

Not all violations of laws are crimes/delicts[5] or punishable offenses. Only the violations of penal laws and penal precepts are punishable under CCEO, because this Code adheres to the principle of strict legality which is enshrined in the maxim "*nullum crimen, nulla poena sine lege praevia*,"[6] whereas it is not the case in the Latin Church because of the presence of the general norm as presented in CIC c. 1399,[7] which remains unchanged even after the reform of penal law by Pope Francis through the Apostolic Constitution *Pascite Gregem Dei* of 23 May 2021.[8]

[5] Whereas CIC uses both terms "delict" and "crime" interchangeably, CCEO does not use the term "crime" or "*crimen*" at all.

[6] Cf.: Franco E. Adami, "Il diritto penale canonico e il principio «nullum crimen, nulla poena sine lege», *Ephemerides iuris canonici*, XLVI (1990) 137-177. Wilhem Rees states that this principle is first formulated by Anselm von Feuerbach: cf. Wilhem Rees, *Die Strafgewalt der Kirche*, *Kanonistische Studien und Texte*, Band 41, Berlin, Bunker & Humbolt, 1993, 485.

[7] CIC c. 1399: "Besides the cases prescribed in this or in other laws, the external violation of divine or canon law can be punished, and with a just penalty, only when the special gravity of the violation requires it and necessity demands that scandals be prevented or repaired."

[8] For details, cf.: Brian T. Austin, "The Revised Book VI, Part I Selected Norms and Commentary," *The Jurist* 77 (2021) 291-334; John Paul Kimes, "Reclaiming "Pastoral": *Pascite gregem Dei* and Its Vision of Penal Law, *The Jurist* 77 (2021) 269-289; Juan Ignacio Arrieta, "A Presentation of the New Penal System of Canon Law," *The Jurist* 77 (2021) 245-267.

CCEO c. 1414 §2[9] stipulates thus: "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." Hence, not all violations of liturgical laws are punishable in the Eastern Code. Violation of some of the liturgical laws are punishable because they are found in the section of penal law of the Code or because their violations are punishable under the M.P. *Sacramentorum Sanctitatis Tutela* of 2001 and 2010 or under similar legislations like *Vos Estis Lux Mundi*[10]. In other cases, particular penal laws can be enacted by those who have legislative powers (cf. CCEO c. 1405 §1; CIC c. 1315, §1[11]), or penal precepts can be issued (cf. CCEO c. 1406 §§ 1[12]-2; CIC c. 1319 §§1-2). At this juncture, it

[9] Cf. Article 6 of the M.P. *Vocare Peccatores* of Pope Francis dated 20 March 2023. Earlier, it was CCEO c. 1414, §1:

[10] Congregation for the Doctrine of the Faith, *Norms on the Delicts Reserved to the Congregation for the Doctrine of the Faith*, Vatican City, Libreria Editrice Vaticana, 2012, 61 pages. See also, Pope Francis, Motu Proprio *Vos Estis Lux Mundi*, 25 March 2023: https://www. vatican. va/content/francesco/en/motu_proprio/ documents/20230325-motu-proprio -vos-estis-lux-mundi-aggiornato.html (accessed on 6 July 2023).

[11] CIC c. 1315, §1: "Whoever has power to issue penal laws may also reinforce a divine law with fitting penalty." The revised version of the above canon has changed "*qui legislativam habet potestatem*" to "*qui potestatem habet leges poenales ferendi*" thus implying that all those who are endowed with legislative power may not have the power to issue penal laws. For example, the Chapters/Synaxes of religious institutes of women have the power to legislate. However, they do not have the power to enact penal laws. However, it is to be noted that the Schema of 2011 did not have such change. Moreover, this change is not carried into its parallel in CCEO, namely to canon 1405, which remains unchanged in the M.P. *Vocare Peccatores*.

[12] Art. 2 of *Vocare Peccatores* has added to the first paragraph of CCEO c. 1406 another condition: "in accordance with the provisions of cann. 1510-1520", thus adopting the addition given in CIC c. 1319, §1 and thus the revised text of CCEO c. 1406, §1 reads thus: "Insofar as one can impose precepts, one can, after thorough consideration of the matter and with the utmost moderation, threaten determined penalties by precept, in accordance with the provisions of cann. 1510-1520, with the exception of those

must be remembered that mere disciplinary laws and penal laws are not the same, and hence the revised version of CIC c. 1315 §1 which has substituted the phrase "whoever has legislative power" with "whoever has power to issue penal laws," has a better nuance in this regard.

It is to be noted that the reform of penal law of CCEO by Pope Francis has made the issuance of penal precept to appear as something almost obligatory on the Hierarch on certain occasions. For example, through article 3 of *Vocare Peccatores*, a new paragraph is added to CCEO c. 1407 and its paragraph three reads thus: "If warnings and corrections are in vain, the Hierarch is to[13] give a penal precept, in which he shall prescribe what must be done and what must be avoided."[14] However, the very fact that CCEO c. 1407 §4, which is the same as CCEO c. 1407 §3 of 1990, clarifies that a penal precept is not an essential component before the imposition of penalties and after a canonical penal warning, penalty can be imposed.[15] In fact, where there is a violation of penal law, penal warning is enough to proceed with the imposition

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enumerated in can. 1402, §3. The patriarch, however, can threaten even these penalties by precept with the consent of the permanent synod."

[13] The pertinent question is how to translate "det," which is in the subjunctive mood. One may translate it as jussive subjunctive or as hortatory subjunctive. Because of the presence of 1407 §4, it may appear that the better translation is as hortatory subjunctive, with "may give" instead of "must give". However, it is to be noted that the legislator did not use *dari potest* in this regard. It is to be noted that both Codes have translated *puniatur* as "to be punished" and *puniri potest* as "can be punished". If we take *det* in the same vein, its appropriate translation appears to be "is to give."

[14] CCEO c. 1407 §3: "*Si monitiones vel correptiones frustra alicui factae sint, Hierarcha det praeceptum poenale, in quo accurate praescribat quid agendum vel vitandum sit*" (If warnings and corrections are in vain, the Hierarch must give penal precept, in which he shall prescribe what must be done and what must be avoided).

[15] CCEO c. 1407 §4: "However, the penal warning mentioned in can. 1406, §2 suffices for the imposition of a penalty" (cf. *Vocare Peccatores*, art. 3).

of punishment, whereas a penal precept must be issued to punish violation of laws which are not penal in nature.

**2. Innocent Until Proven Guilty (CCEO c. 1414 §1; CIC c. 1321 §1)**

One of the noteworthy additions to the penal law section through the reform of penal law by Pope Francis is the inclusion of the legal maxim "innocent until proven guilty" as a canon into the Codes. In fact, this idea was implicit in both CIC 1983 and CCEO. CCEO c. 1207 §1 stipulates thus: "The burden of proof rests upon the person who makes the allegation." Its parallel in CIC is also identical: "The onus of proof rests upon the person who makes an allegation" (CIC c. 1526 §1). Likewise, both Codes have made it clear that "the accused is not bound to confess the delict nor can an oath be administered to the accused" (CCEO c. 1471, §2; CIC c. 1728, §2). Moreover, CCEO c. 1408 clarifies that "a penalty does not bind the guilty party until after it has been imposed by a sentence or a decree, …" And the title XXVIII of the Eastern Code, which contains the canons on penal procedure, is very careful in its use of "accused" (*accusatus*) and "convicted/guilty" *(reus*), although in the CLSA English translation, this distinction is not upheld.[16]

Likewise, there were instances of judicial sentences like the one in which the accused was declared guilty and punished just because he failed to prove that he was innocent, or just because he was unable to explain why the alleged victim hurled such an allegation against him. This author himself did file, represent, and argue an appeal for a priest who had been convicted by an ecclesiastical tribunal of first instance, specially constituted to adjudge a penal case '*contra sextum*' according to SST norms,

[16] CCEO c. 1469 §3 uses the term *accusatus* and it is rendered in English as "the accused." Likewise, in CCEO c. 1473, the term '*accusatus*' is also translated correctly as 'accused'. Likewise, in CCEO cc. 1471, §2, 1477, §1 and in 1478, the term *accusatus* is translated correctly as accused. However, in CCEO c. 1481, §1, the Latin origin is no more "*accusatus*", but "reus", because the canon deals with a convicted person's appeal. However, the English translation of 'reus' is mistakenly given as "accused." In fact, it should have been "convicted," or "guilty."

where the accused was convicted, and sentenced with the penalty of deposition, without any proven evidence at all against him, arguing that the accused failed to explain why the alleged victim had raised such an allegation against him.[17] That judgement was overturned by the appellate tribunal and the sentence of the first instance was declared null and void.

In order to prevent any such eventuality of miscarriage of justice, Pope Francis included the legal maxim, "innocent until proven guilty" in the Codes as canons CCEO c. 1414 §1 and CIC c. 1321 §1 respectively.[18] This maxim is already present in the Universal Declaration of Human Rights of 1948 by the United Nations, as its article 11: "Everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."[19] Kenneth Pennington, in his article "Innocent Until Proven Guilty: The Origins of a Legal Maxim,"[20] has shown that this maxim was also present in the French *Declaration of the Rights of Man and Citizen* of 1789 stating that "every man is presumed to be innocent until declared guilty."[21] Pennington has

[17] Cf. CDF Prot. No. 204/2015 – 70526.

[18] A recent praiseworthy work on the revised penal law of the Latin Church, in fact, failed to highlight this important novelty introduced by Pope Francis: cf. Biju Varghese Perumayan, *The Oriental Code (CCEO) and the Newly Revised Penal Law (CIC) – A Review*, Dharmaram Canonical Series 30, Bangalore, Dharmaram Publications, 2023, 97 pages.

[19]Cf. James Mathew Pampara, "The United Nations' Universal Declaration of Human Rights and Their Implementation in the Dalit and Subaltern Context of India," in Sebastian Alackapally, ed., *Identity and Solidarity*: Festschrift in Honour of Prof. Dr Thomas Kadankavil CMI, Dharmaram Philosophy Series 52, Bangalore, Dharmaram Publications, 2023, 313-325.

[20] Kenneth Pennington, "Innocent Until Proven Guilty: The Origins of a Legal Maxim," in Patricia M. Dugan, ed., *The Penal Process and the Protection of Rights in Canon Law*. Proceedings of a Conference held at the Pontifical University of the Holy Cross Rome, March 25-26, 2004, Collection Gratianus Series, Canada, Wilson & Lafleur Ltée, 2005, 45-66.

[21] Kenneth Pennington, "Innocent Until Proven Guilty: The Origins of a Legal Maxim," 46, n. 2: *Déclaration des droits de l'homme et de citoyen.*

also shown that in the 12th century, a jurist named Paucopalea, argued based on Genesis 3: 9-12, that God himself judged Adam and Eve only after having heard them and after having given them a fair trial and the opportunity to exercise the right of self-defence, and if God did so, then the humans are all the more bound to follow that lead.[22] Taking the lead from Paucopalea and the decretal of Pope Boniface VIII (*Rem non novam*), French canonist Johannes Monachus, who died in 1313, clearly argued that a person must be presumed innocent until proven guilty (*item quilibet presumitur innocens nisi probetur nocens*).[23] He also argued that this right to be considered innocent until proven guilty is of natural law and hence not even a Pope can ignore this right and declare someone guilty without proving his or her guilt through a penal process.[24]The inclusion of this maxim in the canons of both codes is all the more relevant in the context of alarming cases of clerical sexual abuse of minors and the ensued policy of zero tolerance. There should not be any place in the Catholic Church for priests who abuse minors or for those who commit such heinous crimes or delicts. However, it must be remembered that a mere allegation does not make a person a criminal and everyone has fundamental human right to good name (cf. CCEO c. 23; CIC c. 220). However, it is to be noted that when there is the proven external violation of a penal law or a penal precept, CCEO presumes that it was deliberate (CCEO c. 1414, §3), as it was the case in *Crimen Sollicitationis*[25] and in CIC

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Décrétés per l'Assemblée nationale dans les séances des 20, 21, 23, 24 et 26 août, 1789, accepté par le Roi. Article 9: "As all persons are held innocent until they have been declared guilty, if arrest shall be indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed."

[22] Kenneth Pennington, "Innocent Until Proven Guilty: The Origins of a Legal Maxim," 53.

[23] Kenneth Pennington, "Innocent Until Proven Guilty: The Origins of a Legal Maxim," 56.

[24] Kenneth Pennington, "Innocent Until Proven Guilty: The Origins of a Legal Maxim," 55.

[25] Supremae Sacrae Congregationis Sanctii Officii, Instruction, *Crimen Sollicitationis*, 16 March 1962, in William Richardson, *The Presumption of*

1917[26], whereas in CIC 1983 c. 1321, §3, "where there has been an external violation, imputability is presumed," and that imputability can be due to "malice or culpability" (CIC c. 1321, §1) and where "a person who deliberately violated a law or a precept is bound by the penalty prescribed in that law or precept" (CIC c. 1321, §2), a person who is imputable due to the omission of due diligence is not punished (cf. CIC c. 1321, §2) ordinarily.[27]

**3. Penalties Through Penal Precepts (CCEO c. 1406, §1).**

Most of the time, the liturgical books, although binding on the concerned celebrants, do not contain any penal sanctions to enforce them. Hence, where there are repeated violations, the competent higher authority may be compelled to use penal precepts[28] to enforce the correct celebration of public divine worship. The competent higher authority is in addition to the Apostolic See, the patriarch, major archbishop, eparchial bishop, and the major superior of an institute of consecrated life who has the ordinary power of governance (CCEO c. 1402, §3).[29] When a

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*Innocence in Canonical Trials of Clerics Accused of Child Sexual Abuse*: *A Historical Analysis of the Current Law*. Canon Law Monograph series 6, Leuven-Walpole, MA: Peeters, 2011, 306-318.

[26] CIC 1917 c. 2200, §2: "Positing an external violation of the law, dolus in the external forum is presumed until the contrary is proven" (*Posita externa legis violation, dolus in foro externo praesumitur, donec contrarium probetur*). And in the first paragraph of the same canon, *dolus* was defined as the deliberate will to violate a law (*deliberata voluntas violandi legem*).

[27] Cf. William Richardson, *The Presumption of Innocence in Canonical Trials of Clerics Accused of Child Sexual Abuse*, 221: "In its treatment of imputability, it removed the burden from the accused of proving himself innocent of malice, which had existed under the 1917 Code, once it was established that the alleged crime had taken place."

[28] Dicastery for Legislative Texts, *Penal Sanctions in the Church*. User Guide for Book VI of the Code of Canon Law, www.delegumtextibus.va; idem, *Penal Sanctions in the Church*. User Guide for Book VI of the Code of Canon Law, Bangalore, Conference of Catholic Bishops of India, 2024, 30-31.

[29] Frederick C. Easton, "Commentary on CCEO c. 1406," in John D. Faris & Jobe Abbass, eds., *A Practical Commentary to the Code of Canons*

person celebrates the Divine Eucharist in blatant violation of certain liturgical laws, it becomes an illegal celebration. However, that illicit act does not become automatically a delict that can be punished. In such contexts, the competent hierarch can employ the juridical instrument called penal precept to the concerned person. Regarding penal precepts, we read thus in CCEO c. 1406, §1: "In so far as one can impose precepts, according to the prescripts of cann. 1510-1520,[30] one can, after a thorough consideration of the matter and with the utmost moderation, threaten determined penalties by precept, with the exception of those enumerated in can. 1402, §3. The Patriarch, however, can threaten even these penalties by precept with the consent of the Permanent Synod. §2. A warning containing the threat of penalties by which the hierarch enforces a non-penal law in individual cases is equivalent to a penal precept."[31]

When a penal precept is given to a person who has already violated a liturgical law, any further violation of that liturgical law becomes a delict which can be punished without any further canonical warning (*monitio canonica*). However, as there are no *latae sententiae* penalties in the Eastern Code, no such violation will become a delict leading to an automatic punishment, and hence the provisions of penal procedure as given in the Code must be followed, considering CCEO c. 1408, which stipulates thus: "A penalty does not bind the guilty party until after it has been imposed by a sentence or decree, without prejudice to the right of the Roman Pontiff or an ecumenical council to establish

*of the Eastern Churches*, Collection Gratianus Series, Chambly (Qc), Canada: Wilson & Lafleur, 2019, vol. II, 2526.

[30] CCEO c. 1510, §2: "Administrative acts are chiefly: 1° decrees which give a decision or make a canonical provision for a special case; 2° singular precepts which directly enjoin a specific person or persons to do something or omit something, especially in order to urge the observance of law; 3° rescripts which grant a privilege, dispensation, permission or another favor."

[31] English translation of this canon is taken from, Sebastian Payyappilly, ed., *A Compendium of Revised Norms of Corpus Iuris Canonici*, Dharmaram Canonical Studies 33, Bangalore: Dharmaram Publications, 2023.

otherwise." Here, the reference to "a sentence" means the the guilty verdict and that the imposition of penalty must be preceded by a judicial trial as per CCEO cc. 1471-1482, and the reference to "a decree" implies an administrative penal process as per CCEO cc. 1486-1487. Since violations of liturgical norms can be considered as cognizable offenses, as such can be seen by many, perhaps what can be omitted in such penal processes is only the preliminary investigation stipulated in CCEO cc. 1468-1470, because CCEO c. 1468 clearly states that where the preliminary investigation "seems entirely superfluous," it can be omitted. However, even in such cases, care must be taken by the concerned hierarch to mention it in the decree with which he initiates the judicial trial or an administrative penal process. As it is the duty of the promotor of justice to file the *libellus*[32] in case of judicial trial or of administrative penal process, it is prudent to consult him, at least, before emanating such a decree. In the considered opinion of this author, even when the concerned hierarch has decided to proceed further without the preliminary investigation as it is seemed "entirely superfluous," it is better to "hear the accused and the promotor of justice regarding the delict as well as, if he considers it prudent, two judges or other experts of law" (CCEO c. 1469, §2), before emanating the decree with which he initiates the penal trial or administrative penal process.[33]

### 3.1. Form and Content of Penal Precept

A penal precept must be in writing because it is a type of administrative act. Regarding administrative acts, CCEO c. 1517 stipulates thus: "An administrative act which regards the external forum, with due regard for cann. 1520, §2 and 1527, must be put in writing." Hence, a hierarch, who, at the end of a canonical visitation, giving a penal precept orally, must put it in writing and he must intimate the person concerned for it to be legally

[32] Cf. Giorgio Giovanelli, *Quoties iustae obstent causae*. Dal Processo penale amministrativo al prcesso penale giudiziale straordinario, Rome, Lateran University Press, 2016, 38.

[33] Cf. Paolo Bianchi, "Dalla indagine previa al processo penale: che cosa aquisire?," *Periodica* 112 (2023) 299-317.

effective. Regarding the form of the penal precept, first, one must understand that it is a precept. "Singular precepts … legitimately enjoin a specific person or persons to do or to omit something, especially in order to urge the observance of the law" (CCEO c. 1510, §2, 2°), In other words, precepts are either orders or prohibitions. Hence, it must contain "I hereby order you …" or that "I hereby prohibit you…" In fact, one of these two clauses is sufficient for a juridic act to be called a precept. A precept that contains a threat of punishment is called a penal precept (CCEO c. 1406, §2). This threat need not be determinate like the threat of suspension or deposition. In canonical practice, very often penal precepts are doubly enforced first through a prohibition (*nefas*) and then through an order (*fas*). In the liturgical controversy due to rebellious priests of the Archeparchy of Ernakulam-Angamaly, a penal precept could be formulated thus: "I hereby issue you this penal precept through which I prohibit you from celebrating the so-called *Janabhimukha Qurbana* (*Missa versus populum*) hereafter, and I, moreover, order you to celebrate the *Qurbana* as per the instructions given in the *Thaksa*, namely, by starting the *Qurbana* at the *Bema* facing the community, and, then at the Great Entrance, moving to the altar and thereafter continuing the Eucharistic celebration facing the altar together with the community, having the same orientation as the community as per the instruction given in the *Thaksa*, and again concluding the liturgical celebration facing the people after the communion service. Any violation of this penal precept will lead to penal procedure without any further canonical warning." It is to be noted that "I exhort" or "I plead" or "I request" cannot be considered as fulfilling the legal requirement of a penal precept and hence, when a hierarch decides to issue a penal precept, such a hortative language must be altogether avoided in that communication. However, the terms like "I instruct" and "I direct" are to be considered as equivalent to "I order."[34]

[34] Cf. Brendan Daly, *Penal Law in Action*, Mahawah, NJ, Paulist Press, 2023, pp. 62-72.

Another question to be considered in this context is whether a hierarch can issue a penal precept through a circular letter addressed to all priests of an eparchy or members of a clerical religious institute or its province? Since CCEO c. 1510, §2, 2° foresees issuing such a precept to a group of persons together, there is such a possibility, under four conditions: namely, it must contain the title "penal precept," and it should contain only an order and/or a prohibition, and that to whom it is addressed must be clear, and it must be properly intimated. Since such a juridic instrument will then be called a penal precept and not a circular letter, it can be concluded that issuing a penal precept as a circular letter cannot be effectively done. However, a penal precept can be lawfully intimated by publishing it in the eparchial official bulletin, if it concerns all members of the clergy of that eparchy.

### 3.2. Intimation of a Penal Precept

"An administrative act has effect from the moment it is intimated" (CCEO c. 1511). Regarding how this juridic act of intimation can be done, the traditional understanding is that when it was sent to the concerned person's official postal address through registered post with acknowledgement, then it can be considered as intimated. Here comes the difficulty, if the concerned person refuses to accept the letter from the post. Another safe method of intimation is through an ecclesiastical courier. It can be served by sending the chancellor or vice chancellor, or someone equivalent to him, from the Curia to the concerned person who can hand over the letter to the addressee directly and ask him to sign the acknowledgement. Even if, the concerned person refuses to sign the acknowledgment, if it is given to the concerned person in the presence of two witnesses who certify that the penal precept is given to the concerned person, it is then considered as intimated. Regarding religious, intimation can be done through posting/pasting a copy of the penal precept at the door of his room in the religious house and by simultaneously posting another copy of it on the notice board of the community. The same can be done regarding pastors/parochial vicars too as they too have official

residences and offices. This type of intimation is called "intimation through an edict."

In the contemporary context of electronic modes of communication, giving a penal precept through an e-mail and/or through WhatsApp is also a legal possibility that can be employed, not instead of, but in addition to, the registered post. In Eparchies/Dioceses, where there is the custom of sending official communications through e-mails and WhatsApp, such methods can be employed for a speedy communication in this regard too. In the case of a priest, who has already communicated to his Hierarch through e-mail or WhatsApp in the past, regarding an official matter, he cannot legally object to such an imposition of a penal precept through an e-mail or through a WhatsApp message.

### 3.3. Penal Precept and Canonical Warning

Penal precepts and canonical warnings are two different types of legal instruments that are employed in the context of a canonical penal process. Usually, a penal precept is given to enforce a law which is not penal in nature, whereas a canonical warning is often an essential requirement in the context of a violation of a penal law, to initiate a penal process. CCEO c. 1407, §1 stipulates thus: "If, in the judgement of the hierarch who can impose the penalty, the nature of the delict permits it, the penalty cannot be imposed unless the offender has been warned at least once beforehand to desist from the delict and has been given a suitable time for repentance." From this very canon, it is evident that the canonical warning mentioned here is not an essential element in every delict and there are delicts which can be punished without giving a canonical warning. For example, sexual abuse of a minor and other "more grave delicts" whose penal process is reserved to the Dicastery (earlier: Congregation) for the Doctrine of the Faith through SST Norms of 2001 and 2011 do not require prior canonical warning to initiate the stipulated penal process.[35] On the

[35] CDF, *Norms on the Delicts Reserved to the Congregation for the Doctrine of the Faith*, Vatican City, Libreria Editrice Vaticana, 2012; CDF,

other hand, delicts like the omission of commemoration of one's own hierarch mentioned in CCEO c. 1438 need prior canonical warning to initiate the penal process as stipulated in Title XXVIII of the Eastern Code.

In this context, it is necessary to distinguish between the obligatory or facultative canonical warning on the one hand and the constitutive canonical warning regarding certain delicts. For example, the requirement of canonical warning regarding apostacy, heresy, and schism (cf. CCEO cc. 1436 and 1437) is *sine qua non* or essential for the constitution of the delict. In other words, only the continuation "after having been warned" will lead to the constitution of the delict and if no canonical warning is given, then there is no reality of delict at all in the above-mentioned situations. However, this canonical warning mentioned in CCEO cc. 1436 and 1437 can be given in the form of a penal precept which will then fulfil the requirement of CCEO c. 1407, §1.

## 4. Penal Canons in CCEO and in CIC Regarding Liturgical Violations

Both CCEO and CIC have canons that deal with delicts related to the celebration of the Eucharist and other sacraments, especially the sacrament of penance. Some of the pertinent canons in this regard are the following:

### 4.1. Commemoration of the Hierarch:

CCEO c. 1438, which has no parallel in CIC, stipulates thus: "A person who deliberately omits the commemoration of the hierarch in the Divine Liturgy and in the divine praises as prescribed by law, and does not reconsider, though legitimately warned, is to be punished with an appropriate penalty, not excluding major excommunication." Commenting on his canon, Frederick C. Easton has written thus in the "Practical Commentary:"

> Canon 1438 is related to canon 1437 on schism in that there is a similarity in matter. The inadvertent omission of this

"Normae de delictis Congregationi pro Doctrina Fidei reservatis," *Communicationes*, LIII (2021), 428-445.

commemoration would not constitute the basis for a delict, but only its deliberate omission. Failure to reconsider after a warning constitutes the formal delict. Again, as with the two previous canons, there is required an appropriate space of time to be allotted after the warning to allow the offending cleric to reconsider his position.

Unlike for the delicts of heresy and apostacy, the type of penalty for this delict is not obligatory but an appropriate penalty is required. Given that a deliberate refusal to make the commemoration of the hierarch is a clear expression of a lack of communion with the hierarch, major excommunication is given as an optional penalty in this case. Depending on the adamancy with which the cleric omitted the commemoration, the issuance of the penalty of major excommunication might very well be quite congruent with the delict.

Unlike schism to which this delict is related, it is not reserved to the CDF. The local hierarch is competent by law to adjudicate and apply a penalty in this case. If this penalty is imposed in a judicial process, any appeal of that decision carried out would be adjudicated by the ordinary second instance tribunal for all contentious causes. Depending upon what is foreseen as a possible penalty in the particular case, the hierarch is advised to establish a collegiate tribunal for the process. The application for a major excommunication, of course, cannot be applied by way of an extra-judicial decree (c. 1402 §2). If the penalty is imposed by extra-judicial decree, any hierarchical recourse would be presented following the norms found in canons 996-1006. The superior for recourse from the decree of an eparchial bishop inside the territory of a patriarchal or major archiepiscopal Church is the synod of bishops. Outside the territory of the patriarchal or major archiepiscopal Church, the superior is the Apostolic See.[36]

[36] John D. Faris & Jobe Abbass, eds., *A Practical Commentary to the Code of Canons of the Eastern Churches*, Collection Gratianus Series, Chambly, Canada: Wilson & Lafleur, 2019, Vol. II, 2573-2574.

While agreeing with most of the commentary on the canon by Easton, in the considered opinion of this author, the hierarchical superior of an eparchial bishop of the proper territory in this regard is the Patriarch or Major Archbishop and not the Synod of Bishops. Another important point to note is that not only a local hierarch can initiate a penal process, but also any major superior of a clerical religious institute which has the power of governance, in case of a cleric under his authority is alleged to have committed a delict according to CCEO c. 1438.

### 4.2. Violation of the Laws Regarding *Communicatio in Sacris* (CCEO c. 1440)

CCEO c. 1440 stipulates thus: "A person who violates the norms of law concerning participation in sacred rites (*communicatio in sacris*) can be punished with an appropriate penalty" (cf. CIC c. 1381). Here the canon does not stipulate an obligatory punishment. Instead, it only states that such a delict can be punished (*puniri potest*). In this context, we must distinguish two types of violations: the first one is the concelebration of the Divine Eucharist with priests of non-Catholic sister Churches and the second one is the concelebration of the Divine Eucharist with a minister of an ecclesial community. The first one is not a reserved delict, whereas the second one is a "more grave delict" reserved to the Dicastery for the Doctrine of the Faith as per SST Norms: "The concelebration of the Eucharistic Sacrifice prohibited in can. 908 of the Code of Canon Law, and in can. 702 of the Code of Canons of the Eastern Churches, spoken of in can. 1365 of the Code of Canon Law, and in can. 1440 of the Code of Canons of the Eastern Churches, with ministers of ecclesial communities which do not have apostolic succession and do not acknowledge the sacramental dignity of priestly ordination" [SST Norms, art. 3, §1, 4°]. Regarding the unreserved delict of concelebration of the Divine Eucharist with a priest of a non-Catholic Church, the hierarch is obliged to issue a canonical warning as per CCEO c.

1407, §1, in case he considers this violation needs to be prohibited further.[37]

### 4.3. Sacrilege of the Divine Eucharist (CCEO c. 1442)

With the revision of penal law by Pope Francis through his Motu Proprio *Vocare Peccatores* dated 20 March 2023, CCEO c. 1442 has got two paragraphs and they read thus: "§1. 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. §2. A person guilty of consecrating for a sacrilegious purpose one element only or both elements within the Eucharistic celebration or outside it is to be punished according to the gravity of the offence, not excluding deposition." Regarding the "throwing away" mentioned in paragraph one, there is an authentic interpretation from the Pontifical Council for Legislative Texts which has enlarged its meaning and we read thus:

> The verb *abiecit* should not be understood only in the strict sense of throwing away, nor in its generic sense of profaning, but with the broader meaning of to scorn, to disdain, or to demean. Therefore, a grave offence of sacrilege against the Body and Blood of Christ is committed by anyone who takes away and/or keeps the Sacred Species for a sacrilegious (obscene, superstitious, irreligious) purpose, and by anyone who, even without removing them from the tabernacle, monstrance or altar, makes them the object of any external, voluntary and serious act of contempt. Anyone guilty of this offence incurs in the Latin Church the penalty of excommunication *latae sententiae* (i.e., automatically), the absolution of which is reserved to the Apostolic See; in the

[37] According to Frederick C. Easton, this is occasion where a penal precept must be issued. However, in the considered opinion of this author, as there is already a substantive penal law, what is required here is just a *monitio canonica* and not a penal precept. Cf. Frederick C. Easton, "Commentary on CCEO c. 1440," in John D. Faris & Jobe Abbass, eds., *A Practical Commentary to the Code of Canons of the Eastern Churches*, Collection Gratianus Series, Chambly (Qc), Canada, Wilson & Lafleur, 2019, vol. II, 2575.

> Eastern Churches, he incurs a major excommunication *ferendae sententiae* (i.e., to be imposed.[38]

The second paragraph of this canon is taken from SST Norms (art. 3, §2) and hence it is a reserved delict. The delicts in question do not require any canonical warning before the hierarch can initiate the penal process.[39] Here the penalty is obligatory and what is stipulated is the highest possible penalty, that is a major excommunication and in addition to that for clerics, even deposition is a possibility. Regarding the reserved delict, the hierarch must conduct the preliminary investigation and after that he must send the ACTA of the preliminary investigation together with his *votum* to the disciplinary section of the Dicastery for the Doctrine of the Faith for further orders. SST Norms, art. 16 reads thus: "Whenever the Ordinary or Hierarch receives a report of a more grave delict, which has at least the semblance of truth, once the preliminary investigation has been completed, 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, with due regard, however, for the right to appeal against a sentence of the first instance only to the Supreme Tribunal of the same Congregation, when called for." However, if the delict in question is heresy, apostacy or schism, the first instance penal trial can be conducted by a tribunal of three judges constituted by the competent Ordinary/Hierarch (SST Norms, art. 2, §2).

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[38] *AAS* 91 (1999) 918; English Translation from Frederick C. Easton, "Commentary on CCEO c. 1442," in John D. Faris & Jobe Abbass, eds., *A Practical Commentary to the Code of Canons of the Eastern Churches*, Collection Gratianus Series, Chambly (Qc), Canada, Wilson & Lafleur, 2019, vol. II, 2577.

[39] Cf. Tharigopala Lourdesamy, "Desecration of the Blessed Eucharist: A Juridical Study in the Light of Can. 1382 § 1 of *CIC* 1983," *Studies in Church Law* 17 (2022) 211-244.

### 4.4. Simulation of Divine Liturgy and Allied Delicts (CCEO c. 1443)

With the revision of penal law through the Motu Proprio *Vocare Peccatores*, Pope Francis has totally replaced CCEO c. 1443 and the revised canon reads thus:

> §1. A person is to be punished with appropriate penalty, not excluding major excommunication:
>
> 1° a person who simulates celebration of the Divine Liturgy or other sacraments;
>
> 2° a person, who not being an ordained priest, attempts the liturgical celebration of the Eucharistic Sacrifice;
>
> 3° a person who, apart from the case mentioned in can 1457, though unable to give valid sacramental absolution, attempts to do so, or hears a sacramental confession [CIC c. 1379, §1, 2°; SST art. 4, §1, 2°].
>
> §2. A person who deliberately administers a sacrament to those who are prohibited from receiving it is to be punished with suspension to which other penalties can be added [CIC c. 1379, §4].

First number of the first paragraph of this canon is taken from Article three of SST Norms and the second paragraph of this canon is the same as CIC c. 1379, §4, which is totally a new canon in both Codes. CCEO c. 1443, §1, 1°, which is verbatim taken from SST Norms, art. 3, §1, 3°, and which is also found in CIC c. 1379, §5, is a reserved delict and it is about simulation of the celebration of the Divine Liturgy or other sacraments. Simulation takes place when there is an external action, which is in consonance with the liturgical norms regarding the celebration, while there is a different internal disposition in the celebrant/s. Simulation takes place when the celebrant intends not what the Church wants to do in the given context. Here, the celebrant is competent to celebrate the Divine Eucharist or other sacraments as he has the valid ordination or he has the suitability as per the norms of canon law. However, for certain reasons, he decides to simulate or pretend to celebrate having a different intention for his action. However, as it seems

from outside that the celebration is conducted as per the norms of law, it is difficult to prove and judge whether a certain celebration was simulated or not. A typical example is, perhaps, the continuous celebration of sixteen times of the Holy Qurbana at Saint Mary's Cathedral of Ernakulam-Angamaly, from 23-24 December 2022, by a group of priests of that Eparchy, apparently to hinder the Rector of the Basilica from celebrating the Synodal form of Holy Eucharist there. However, even in this case, which was termed by the Apostolic See as "abusive celebration," the penal process did not find enough evidence to term it as simulation of the celebration of the Divine Eucharist.

CCEO c. 1443, §1, 2° stipulates that any person who attempts the celebration of the Eucharistic Sacrifice must be punished with a major excommunication. It is taken from SST Norms, art. 3, §1, 2° and its parallel is found in CIC c. 1379, §1, 1°. This is also a reserved delict. The difference between simulation and attempted celebration is that in simulation, the delinquent is legally competent to carry out the liturgical celebration, whereas in attempted celebration, the accused person is legally not competent to celebrate the Divine Eucharist. Hence, this attempted celebration is performed by a deacon or a non-ordained person or by a priest who is by law prohibited to celebrate the Divine Eucharist.

CCEO c. 1443, §1, 3° stipulates an appropriate penalty, not excluding a major excommunication, for the delict of hearing confession or attempting to give sacramental absolution to a penitent while the person has no authority to do so. This canon is taken from SST Norms, article. 4, §1, 2°, and its parallel is present as canon 1379, §1, 2° in CIC. CCEO c. 722, §§ 2 and 3 state thus: "§2. All bishops can by virtue of the law itself administer the sacrament of penance anywhere, unless with regard to liceity, the eparchial bishop expressly denies this in a special case. §3. However, for presbyters to act validly, they must have the faculty to administer the sacrament of penance; this faculty is conferred either by the law itself or by a special grant made by the competent authority." In other words, the power of orders is not enough for a presbyter to hear confession and to give absolution validly. He

needs faculty which he can attain from the eparchial bishop of his domicile or by virtue of his office or in various other ways. If he has this faculty from his own bishop, it is valid all over the world. However, if any presbyter hears confession and gives absolution without having the necessary faculty, that becomes a delict punishable under this canon. For secular clergy, the faculty to hear confession given by his own eparchial/diocesan bishop is valid all over the world, for the period it was given. For a religious priest, this faculty must be asked and received from the eparchial bishop, in whose territory the religious house to which he is ascribed is situated. It means that very often a religious priest must apply for a new faculty when he is transferred to a new community which is in a new eparchy. The interpretation that if the religious priest gets the faculty to hear confession from the eparchial bishop where the provincial house of the religious institute is situated, then it is valid even if he is transferred to religious houses in other eparchies is incorrect, as the domicile of that religious priest changes with his transfer. The proper bishop of a religious is decided based on his domicile (cf. CCEO c. 912) in a particular eparchy based on his ascription to a religious house.

One of the novelties introduced by Pope Francis through his reform of penal law in CCEO is the introduction of a new penal law as c. 1443, §2.[40] It is the verbatim adoption of CIC c. 1379, §4. In fact, in CIC 1917, this substantive penal law existed as can. 2364, which did not find a place in CIC 1983.[41] However, the adverb "deliberately" introduced in this canon is very significant. It was not there in CIC 1917. CIC 1917 c. 2364 read thus: "A minister who dares to administer Sacraments to those who, by either divine or ecclesiastical law, are prohibited from receiving the same is suspended from the administration of the Sacraments

[40] James Mathew Pampara, "Francis Marpappayude Aanukalika Paurasya Canon Niyama Parishkarangal," *Satyadarsanam* 9/6 (2023) 3-4.

[41] For a detailed study of this canon in CIC, cf.: Antonio S. Sánchez-Gil, "La reviviscenza del delitto di deliberata amministrazione di un sacramento a colui al quale è proibito receverli," *Ius Ecclesiae*, XXXV, 1 (2023) 273-290.

for a time to be defined by the prudent judgement of the Ordinary and shall be punished with other penalties for the gravity of the fault, with due regard for penalties established in law for other delicts of this sort."[42] The Schema prepared by the Pontifical Council for Legislative Texts (2011) referred to this canon and suggested its revival stating that such instances are never infrequent.[43] According to CCEO c. 1414, §3, "when an external violation of a penal law or penal precept has occurred, it is presumed that it was deliberately done until the contrary is proven." Hence, in ordinary circumstances, when there is an external violation, there is the canonical presumption that it was done deliberately. However, regarding this canon, there is no such presumption and hence it is the duty of the promotor of justice to prove that the violation was deliberate, to punish the offender. It will necessitate either a canonical warning or a penal precept before a penal process can be initiated in such cases. This safeguard is necessary because a priest who gives communion to a person who stands at the queue to receive communion can only presume that those who ask for the Holy Communion are in fact not prohibited from receiving it. However, a publicly unworthy person (cf. CCEO c. 712, CIC c. 915), whose unworthiness is notorious in a community, cannot be given the Holy Communion by a priest who is informed of the situation of that person. However, it must be borne in mind that after the publication of the encyclical *Amoris Laetitia*, not all cases of divorced and civilly remarried people come under the category of publicly unworthy.[44] If a priest gives communion to a person who is under a major or

[42] English Translation of this canon is taken from Edward N. Peters, Curator, *The Pio-Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001.

[43] Pontificium Consilium de Legum Textibus, *Schema Recognitionis Liber VI Codicis Iuris Canonici*, Vatican City, Typis Vaticanis, 2011, p. 14: "*Restituitur can, 2364 CIC 1917, ita ut explicite typicficetur delictum administrationis alicuius sacramenti ei qui recipere prohibetur. Quod pro dolor, haud infrequenter accidit.*"

[44] Cf. James Mathew Pampara, "Canonical Implications of *Amoris Laetitia*," *Asian Horizons* XI, 1 (March 2017), pp. 42-61.

minor excommunication, it would become a delict that comes under this category.

This penal law is applicable not only regarding the Holy Communion, but also regarding other sacraments. Hence, if any priest would bless a mixed marriage without the necessary permission of the local ordinary, this penal law can be applied to that situation. Likewise, if a priest decides to give holy communion to a non-baptized person, evidently this canon can be invoked against that violation.

### 4.5. Ordination of Women (CCEO c. 1459, §§3-4; CIC c. 1379, §§3-4)

CCEO c. 1459 §3 stipulates thus: "Both a person who attempts to minister a sacramental ordination (CIC: confer a sacred order) on a woman, and the woman who attempts to receive the sacred order is to be punished with major excommunication reserved to the Apostolic See; a cleric can moreover, be deposed." §4: "A person who receives the sacred ordination under the penalty of major or minor excommunication or under an impediment, in addition to what is stated in can. 763, n.1, is to be suspended from the received sacred order." This canon and its parallel in CIC (c. 1379, §§3-4) are taken from SST Norms (art. 5) and hence these are reserved delicts.[45] Through the Apostolic Letter *Ordinatio Sacerdotalis* of 22 May 1994, Pope John Paul II taught that in the Catholic Church, it is impossible to ordain women to priesthood and that it must be considered as a definitive teaching. It was not taught as an infallible teaching, but only as a definitive teaching, thus creating a new category in the context of ecclesiastic magisterium, which is called non-infallible definitive teaching. The faithful are expected to firmly accept and hold such teachings which are taught as definitive (CCEO c. 598, §2). Unlike infallible teachings which are also definitive, here there is no obligation to

[45] James Mathew Pampara, *The Specific Characteristics of the Penal Law and the Penal Procedure in the Code of Canons of the Eastern Churches*, Rome, Pontificium Institutum Orientale, Excerpta ex Dissertatione Doctoratum, 2009, 60-69.

"believe with divine and Catholic faith" (CCEO c. 598, §1). The distinction between these two expected responses lies in the fact that in the case of infallible teaching, the faithful is obliged to convince his brain to accept the teaching whereas regarding the non-infallible definitive teaching, the faithful needs to simply hold the teaching and there is no need to believe it.[46] Instead of holding the definitive teaching that no one can ordain a woman to Catholic priesthood, if a bishop attempts to ordain such a person to priesthood, then that act becomes a reserved delict.

### 4.6. New Delicts in the Context of the Sacrament of Penance (CCEO c. 1456, §§2-3; CIC c. 1386, §§2-3)

CCEO c. 1456, §2: "Interpreters, and the others mentioned in can. 733 §2, who violate the secret, are to be punished with a just penalty, not excluding minor excommunication or suspension. §3: Without prejudice to the provisions of §§ 1 and 2, any person who by means of any technical device makes the recording to what is said by the priest or by the penitent in a sacramental confession, either real or simulated, or who divulges it through the means of social communication, is to be punished according to the gravity of the offence, not excluding, in the case of a cleric, deposition." This canon and its parallel in CIC c. 1386, §§2-3 are taken from SST Norms, art. 4, §2, and hence the delicts mentioned here are reserved delicts.[47]

## 5. Special Faculties Given by Pope Benedict XVI to the Dicastery for the Evangelization of Peoples

Congregation for the Evangelization of the Peoples has received three special faculties from Pope Benedict XVI[48] which gives it

[46] Francis A. Sullivan, "The Definitive Exercise of Teaching Authority," *Theological Studies* 75 (2014) 502-514; Hermann Josef Pottmeyer, "Auf fehlbare Weise unfehlbar? Zu einer neuen Form päpstlichen Lehrens," *Stimmen der Zeit* 124 (1999) 233-242.

[47] James Mathew Pampara, "Liturgical Niyamangalude Langhanavum Sikshana dapadikalum Paurastya canon niyamathil," *Satyadarsanam* 9/8 (2023) 1,4,8,9

[48] Congregation for the Evangelization of the Peoples, *Special Faculties for Administrative Procedure for the Laicization of Priests, Deacons and*

special competence to punish priests who have committed serious delicts with deposition or dismissal from clerical state. Its faculty II is the following: "The Special Faculty to intervene in accord with c. 1399 *CIC*, either by taking direct action in a case or by confirming the decisions of Ordinaries, were the competent Ordinary so to request, due to the special gravity of the violation of law and the need or urgency to avoid an objective scandal. This is granted along with the derogation from the prescriptions of canons 1317, 1319, 1342, §2 and 1349 *CIC*, with respect to the application of perpetual penalties, to be applied to deacons only for grave reasons, always requiring that such cases are presented to the Holy Father for His approval *in forma specifica* and for His decision." From the wording of this legislative text, it may appear that this special faculty is given only regarding the members of the Latin Church as there is no mention of CCEO in it. However, from the *praxis curiae* it is evident that this faculty is also applicable to the Oriental Catholic priests because a priest belonging to the Syro-Malabar Church was so deposed from clerical state using this faculty by the Congregation for the Evangelization of Peoples.

The penal procedure to be followed in applying this faculty is the following:

> "After the 'Previous Investigation' of canons 1717-1719 then the administrative procedure in question may begin (Cf. cc. 35-3 8, 1342, 1720 CIC), which in this instance can only be carried out by a priest (Cf. Can. 483, §2 CIC). The procedure followed must ensure:

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*Members of Institutes of Consecrated Life and Society of Apostolic Life fpr 'Missio ad Gentes',* Prot. N. 0579/09, 31 March 2009, in CLSA, *Roman Replies and CLSA Advisory Opinions 2009*, 48-52; cf. also, Congregation for the Clergy, "Lettera Circolare per l'applicazione delle Tre Facoltà Speciali concesse il 30 gennaio 2009 dal Sommo Pontifice," *Ius Ecclesiae* 23 (2011) 229-235; Giorgio Giovanelli, *Quoties Iustae Obstent Causae*, 136-137; James Mathew Pampara, "Siksha Nadapadikramam Paurastya Canona Samhitayil: Oru Apagradhanam," *Karmalakusumam*, 67/4 (2023) 32-42, here @ 40.

1. that the accused is notified of the accusations brought against him and the proofs presented. He must be afforded the opportunity to defend himself, unless, having been legitimately notified, he has chosen to absent himself from the proceedings. The cleric in question must also be informed of his right to appoint canonical counsel of his choosing;

2. that all the proofs and other elements collected as well as the defence of the accused, be carefully examined with the assistance of two assessors (Cf. cc. 1424 and 1720, 2° CIC),

3. that the Petition be issued in accord with the provisions of cc. 1342- 1350 CIC, if no doubts remain concerning the delict committed, and that the criminal action is not extinguished by prescription, in the sense of cc. 1313 and 1362- 1363 CIC. This Decree, issued according to the norms of cc. 35 -58, must be a demonstrably justified decision, stating, even if only in a summary fashion, the reasons in law and in fact upon which the Petition is based.

4. the competent Ordinary will forward to the Holy See all of the acts along with his votum and the Petition mentioned in n.3° above;

5. if, in the opinion of the Holy See, a supplementary instruction is required, this will be communicated to the competent Ordinary and the materials necessary for the completion of the instruction will be indicated,

6. the Decree of dismissal from the clerical state, along with the dispensation from the obligations arising from sacred Ordination, including celibacy, will be sent to the competent Ordinary, who will provide for its notification to the party concerned."

## 6. SST Norms and Penalties for Grave Violations in the Context of Liturgical Celebrations[49]

Articles 3, 4, and 5 of *Normae de delictis Congregationi pro Doctrina Fidei reservatis* are about delicts that are perpetrated in the context of celebration of the Divine Eucharist and other sacraments. Since, there is neither time nor space to have a detailed discussion of those reserved penal canons, they are given below without any further commentary:

> Article 3: §1. The more grave delicts against the sanctity of the most Holy Sacrifice and Sacrament of the Eucharist reserved to the Congregation for the Doctrine of the Faith for judgement are: 1° the taking or retaining for a sacrilegious purpose or the throwing away of the consecrated species, as mentioned in can. 1368 of the Code of Canon Law, and in can. 1442 of the Code of Canons of the Eastern Churches; 2° attempting the liturgical action of the Eucharistic Sacrifice spoken of in can. 1378, §2, n. 1, of the Code of Canon Law; 3° the simulation of the same, spoken of in can. 1379 of the Code of Canon Law and in can. 1443 of the Code of Canons of the Eastern Churches; 4° the concelebration of the Eucharistic Sacrifice prohibited in can. 908 of the Code of Canon Law, and in can. 702 of the Code of Canons of the Eastern Churches, spoken of in can. 1365 of the Code of Canon Law, with ministers of ecclesial communities which do not have apostolic succession and do not acknowledge the sacramental dignity of priestly ordination.

[49] CDF, *Norms on the Delicts Reserved to the Congregation for the Doctrine of the Faith*, Vatican City, Libreria Editrice Vaticana, 2012; CDF, "Normae de delictis Congregationi pro Doctrina Fidei reservatis," *Communicationes*, LIII (2021), pp. 428-445; John A. Renken, "Normae de gravioribus delictis: 2010 Revised Version Text and Commentary," *Studies in Church Law* 6 (2010) 53-54; Thomas J. Green, "*Sacramentorum Sanctitatus Tutela*: Reflections on the Revised May 2010 Norms on More Serious Delicts," *The Jurist* 71 (2011) 120-158; Charles J. Scicluna, "Procedures and Praxis of the Congregation for the Doctrine of the Faith regarding *Graviora Delicta*, *Forum* 13-14 (2002-2003) 116-125.

§2. Also reserved to the Congregation for the Doctrine of the Faith is the delict which consists in the consecration for a sacrilegious purpose of one matter without the other or even both, either within or outside of the eucharistic celebration. One who has perpetrated this delict is to be punished according to the gravity of the crime, not excluding dismissal or deposition.

Article 4: §1. The more grave delicts against the sanctity of the Sacrament of Penance reserved to the Congregation for the Doctrine of the Faith are;

1° the absolution of an accomplice in a sin against the sixth commandment of the Decalogue, mentioned in can. 1378 §1 of the Code of Canon Law, and in can. 1457 of the Code of Canons of the Eastern Churches;

2° attempted sacramental absolution or the prohibited hearing of confession, mentioned in can. 1378 §2, 2° of the Code of Canon Law;

3° simulated sacramental absolution, mentioned in can. 1379 of the Code of Canon Law, and in can. 1443 of the Code of Canons of the Eastern Churches;

4° the solicitation to a sin against the sixth commandment of the Decalogue in the act, on the occasion, or under the pretext of confession, as mentioned in can. 1387 of the Code of Canon Law, and in can. 1458 of the Code of Canons of the Eastern Churches, if it is directed to sinning with the confessor himself;

5° the direct and indirect violation of sacramental seal, mentioned in can. 1388 §1 of the Code of Canon Law, and in can. 1456 §1 of the Code of Canons of the Eastern Churches;

§2: With due regard for §1, n. 5, also reserved to the Congregation for the Doctrine of the Faith is the more grave delict which consists in the recording, by whatever technical means, or in the malicious diffusions through communications media, of what is said in sacramental confession, whether true or false, by the confessor or the penitent. Anyone who

commits such a delict is to be punished according to the gravity of the crime, not excluding, if he be a cleric, dismissal, or deposition.

Art. 5: The more grave delict of the attempted sacred ordination of a woman is also reserved to the Congregation for the Doctrine of the Faith:

1° With due regard for can. 1378 of the Code of Canon Law, both the one who attempts to confer sacred ordination on a woman, and she who attempts to receive sacred ordination, incur *latae sententiae* excommunication reserved to the Apostolic See.

2° If the one attempting to confer sacred ordination, or the woman who attempts to receive sacred ordination, is a member of the Christian faithful subject to the Code of Canons of the Eastern Churches, with due regard for can. 1443 of that Code, he or she is to be punished by major excommunication reserved to the Apostolic See.

3° If the guilty party is a cleric he may be punished by dismissal or deposition.

**Conclusion**

Liturgical Norms are mostly to be found in the liturgical books (CCEO c. 3) and liturgical books do not contain any penal norms. Very often these liturgical laws are not protected by substantive penal laws either. However, using the legal instrument called "penal precept," a competent Hierarch/Ordinary can enforce the liturgical laws. On the other hand, the penal law section of both CCEO and CIC as well as the special norms of Dicastery for the Doctrine of the Faith (DDF, earlier, CDF: Congregation for the Doctrine of the Faith) contain substantive penal laws regarding certain very serious violations of liturgical norms. This study is a humble attempt to present them and, to certain extent, analyse and clarify them to this august assembly of members of the Oriental Canon Law Society of India, as you have come together for this annual conference, so that there can be fruitful discussion on the various aspects of the subject matter presented.