

History of Norms Addressing Gravest Crimes

VATICAN CITY, JULY 15, 2010.- Here is the historical summary of the development of the norms concerning the most serious crimes, which was published today by the Vatican press office.

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The Code of Canon Law promulgated by Pope Benedict XV in 1917 recognized the existence of a number of canonical crimes or "delicts" reserved to the exclusive competence of the Sacred Congregation of the Holy Office which, as a tribunal, was governed by its own proper law (cfr. can. 1555 CIC 1917).

A few years after the promulgation of the 1917 Code, the Holy Office issued an Instruction, "Crimen Sollicitationis" (1922), which gave detailed instruction to local dioceses and tribunals on the procedures to be adopted when dealing with the canonical delict of solicitation. This most grave crime concerned the abuse of the sanctity and dignity of the Sacrament of Penance by a Catholic priest who solicited the penitent to sin against the sixth commandment, either with the confessor himself, or with a third party. The norms issued in 1922 were an update, in light of the Code of Canon Law of 1917, of the Apostolic Constitution "Sacramentorum Poenitentiae" promulgated by Pope Benedict XIV in 1741.

A number of concerns had to be addressed, underlining the specificity of the legislation (with implications which are less relevant from the perspective of civil penal law): the respect of the dignity of the sacrament, the inviolable seal of the confessional, the dignity of the penitent and the fact that in most cases the accused priest could not be interrogated fully on what occurred without putting the seal of confession in danger.

This special procedure was based, therefore, on an indirect method of achieving the moral certitude necessary for a definitive decision in the case. This indirect method included investigating the credibility of the person accusing the priest and the life and behaviour of the accused priest. The accusation itself was considered the most serious accusation one could bring against a Roman Catholic priest. Therefore, the procedure took care to ensure that a priest who could be a victim of a false or calumnious accusation would be protected from infamy until proven guilty. This was achieved through a strict code of confidentiality which was meant to protect all persons concerned from undue publicity until the definitive decision of the ecclesiastic tribunal.

The 1922 Instruction included a short section dedicated to another canonical delict: the "crimen pessimum" which dealt with same-sex clerical misconduct. This further section determined that the special procedures for solicitation cases should be used for "crimen pessimum" cases, with those adaptations rendered necessary by the nature of the case. The norms concerning the "crimen pessimum" also extended to the heinous crime of sexual abuse of prepubescent children and to bestiality.

The Instruction "Crimen sollicitationis" was, therefore, never intended to represent the entirety of the policy of the Catholic Church regarding sexual improprieties on the part of the clergy. Rather, its sole purpose was to establish a procedure that responded to the singularly delicate situation that is a sacramental confession, in which the duty of complete confidentiality on the part of the priest corresponds, according to divine law, to the complete openness of the intimate life of the soul on the part of the penitent. Over time and only analogously, these norms were extended to some cases of immoral conduct of priests. The idea that there should be comprehensive legislation that treats the sexual conduct of persons entrusted with the educational responsibility is very recent; therefore, attempting to judge the canonical norms of the past century from this perspective is gravely anachronistic.

The 1922 Instruction was given as needed to bishops who had to deal with particular cases concerning solicitation, clerical homosexuality, sexual abuse of children and bestiality. In 1962, Blessed Pope John XXIII authorised a reprint of the 1922 Instruction, with a small section added regarding the administrative procedures to be used in those cases in which religious clerics were involved. Copies of the 1962 re-print were meant to be given to the Bishops gathering for the Second Vatican Council (1962-1965). A few

copies of this re-print were handed out to bishops who, in the meantime, needed to process cases reserved to the Holy Office but, most of the copies were never distributed.

The reforms proposed by the Second Vatican Council required a reform of the 1917 Code of Canon Law and of the Roman Curia. The period between 1965 and 1983 (the year when the new Latin Code of Canon Law appeared) was marked by differing trends in canonical scholarship as to the scope of canonical penal law and the need for a de-centralized approach to cases with emphasis on the authority and discretion of the local bishops. A "pastoral attitude" to misconduct was preferred and canonical processes were thought by some to be anachronistic. A "therapeutic model" often prevailed in dealing with clerical misconduct. The bishop was expected to "heal" rather than "punish". An over-optimistic idea of the benefits of psychological therapy guided many decisions concerning diocesan or religious personnel, sometimes without adequate regard for the possibility of recidivism.

Cases concerning the dignity of the Sacrament of Penance remained with the Congregation for the Doctrine of the Faith (formerly the Holy Office; its name changed in 1965) after the Council, and the Instruction "Crimen Sollicitationis" was still used for such cases until the new norms established by the *motu proprio* "Sacramentorum sanctitatis tutela" in 2001.

A small number of cases concerning sexual misconduct of clergy with minors was referred to the Congregation for the Doctrine of the Faith after the Second Vatican Council. Some of these cases were linked with the abuse of the sacrament of Penance, while a number may have been referred as requests for dispensations from the obligations of priesthood, including celibacy (sometimes referred to as "laicization") which were dealt with by the Congregation for the Doctrine of the Faith until 1989 (From 1989 to 2005 the competence in these dispensation cases was transferred to the Congregation for Sacraments and Divine Worship; from 2005 to the present the same cases have been treated by the Congregation for the Clergy).

The Code of Canon Law promulgated by Pope John Paul II in 1983 updated the whole discipline in can. 1395, § 2: "A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants". According to the 1983 Code of Canon Law canonical trials are held in the dioceses. Appeals from judicial sentences may be presented to the Roman Rota, whereas administrative recourses against penal decrees are presented to the Congregation for the Clergy.

In 1994 the Holy See granted an indult to the Bishops of the United States: the age for the canonical crime of sexual abuse of a minor was raised to 18. At the same time, prescription (canonical term for Statute of Limitations) was extended to a period of 10 years from the 18th birthday of the victim. Bishops were reminded to conduct canonical trials in their dioceses. Appeals were to be heard by the Roman Rota. Administrative Recourses were heard by the Congregation for the Clergy.

During this period (1994 - 2001) no reference was made to the previous competence of the Holy Office over such cases.

The 1994 Indult for the US was extended to Ireland in 1996. In the meantime the question of special procedures for sexual abuse cases was under discussion in the Roman Curia. Finally Pope John Paul II decided to include the sexual abuse of a minor under 18 by a cleric, among the new list of canonical delicts reserved to the Congregation for the Doctrine of the Faith. Prescription for these cases was of ten (10) years from the 18th birthday of the victim. This new law was promulgated in the *motu proprio* "Sacramentorum sanctitatis tutela" on 30 April 2001. A letter signed by Cardinal Joseph Ratzinger and Archbishop Tarcisio Bertone, respectively Prefect and Secretary of the Congregation for the Doctrine of the Faith, was sent to all the Roman Catholic Bishops on 18 May 2001. This letter informed the bishops of the new law and the new procedures which replaced the Instruction "Crimen Sollicitationis".

The acts that constitute the most grave delicts reserved to the Congregation were specified in this letter, both those against morality and those committed in the celebration of the Sacraments. Also given were

special procedural norms to be followed in cases concerning these grave delicts, including those norms regarding the determination and imposition of canonical sanctions.

The delicta graviora reserved to the Congregation for the Doctrine of the Faith were as follows:

1. Delicts against the sanctity of the Most Holy Sacrament and Sacrifice of the Eucharist:

Throwing away, taking or retaining the consecrated species for a sacrilegious purpose, or profaning the consecrated species (CIC can. 1367; CCEO can. 1442).

Attempting the liturgical action of the Eucharistic sacrifice or the simulation thereof (CIC can. 1378 § 2 n. 1, can. 1379; CCEO can. 1443).

Concelebrating the Eucharistic Sacrifice together with ministers of ecclesial communities which do not have Apostolic succession nor recognize the Sacramental dignity of priestly ordination (CIC can. 908, 1365; CCEO can. 792, 1440).

Consecrating one matter without the other in a Eucharistic celebration or both outside of a Eucharistic celebration (cf. CIC can. 927).

Delicts against the sanctity of the Sacrament of Penance:

Absolution of an accomplice in the sin against the sixth commandment of the Decalogue (CIC can. 1378 § 1; CCEO can. 1457).

Solicitation to sin with the confessor against the sixth commandment of the Decalogue, in the act of, context of or pretext of the Sacrament of Penance (CIC can. 1387; CCEO can. 1458).

Direct violation of the Sacramental seal (CIC can. 1388 § 1; CCEO can. 1456).

Delicts against morality:

The violation of the sixth commandment of the Decalogue, committed by a cleric with a minor under the age of 18.

The procedural norms to be followed in these cases were as follows:

- Whenever an Ordinary or Hierarch had at least probable knowledge (*notitiam saltem verisimilem habeat*) of the commission of one of the reserved grave delicts, after having carried out the preliminary investigation, he was to inform the Congregation for the Doctrine of the Faith which, unless it called the case to itself because of special circumstances, would indicate to the Ordinary or Hierarch how to proceed. The right of appeal against a sentence of the first instance was to be exercised only before the Supreme Tribunal of the Congregation.

- Criminal action in the cases reserved to the Congregation for the Doctrine of the Faith was extinguished by a prescription of ten years. It was also foreseen that prescription would be computed according to the norms of CIC can. 1362 § 2 and CCEO can. 1152 § 3, with the singular exception of the delict *contra sextum cum minore*, in which case prescription would begin to run from the day when the minor had completed his eighteenth year of age.

- In tribunals established by Ordinaries of Hierarchs, for the cases of the more grave delicts reserved to the Congregation for the Doctrine of the Faith, the functions of judge, promoter of justice, notary and legal representative could be validly performed only by priests. Furthermore, upon completion of the trial in the tribunal in any manner, the acts of the case were to be transmitted *ex officio*, as soon as possible, to the

Congregation.

It was also established that all of the tribunals of the Latin Church and of all Eastern Catholic Churches were to observe the canons on delicts, penalties and the penal process of both Codes respectively. These were to be followed together with the special norms given by the Congregation for the Doctrine of the Faith. Nine years after the promulgation of the motu proprio *Sacramentorum sanctitatis tutela*, the Congregation for the Doctrine of the Faith felt it necessary to propose certain changes to these norms, not modifying the text in its entirety, but rather only in a few areas, in an effort to improve the application of the law.

After a serious and attentive study of the proposed changes, the Cardinals and Bishops Members of the Congregation for the Doctrine of the Faith presented the results of their decisions to the Supreme Pontiff and, on 21 May 2010, Pope Benedict XVI gave his approval and ordered the promulgation of the revised text.

The text of the Norms on delicta graviora currently in force is the text approved by the Holy Father Benedict XVI on 21 May 2010.