

## Disciplinary Penal Process for Clerics

By incorporation through baptism (can 96), all of the faithful have the obligation to maintain communion with the Church (can 209).

Equally, and no matter what the state or condition of the individual concerned (whether clerical or lay), each enjoys a number of substantive and procedural rights in connection with the disciplinary processes of the Church, they include:

- (i) The right not to be subjected to any form of disciplinary sanction save as provided for by law (can 221§3).
- (ii) The right to be heard prior to any such sanction being imposed (can 1720, 1<sup>o</sup> and in the case of sanctions imposed by decree see can 50).
- (iii) The right to be represented within any disciplinary or other judicial process (can 1723. In default of appointment by the cleric concerned, the Judge is under an obligation to do so).
- (iv) The right for the penal provision to be strictly interpreted (can 18).

The Church attaches particular gravity to a number of offences. Certain offences and the competence to adjudicate upon them have been reserved to the Holy See itself<sup>1</sup> 132. In such cases, reference should be made to the relevant *motu proprio* and specific norms promulgated therein in connection with these “reserved matters”. Such reserved offences include:

- (i) Simulation of the Eucharist.
- (ii) Desecration of the Sacred Species.
- (iii) Sexual impropriety involving minors.
- (iv) Direct and indirect violation of the seal of confession.
- (v) Concelebrating the Eucharist with ministers not in communion with the Roman Pontiff.

What follows should be taken as a general overview of the penal process insofar as it relates to clerics. It represents the key stages of the disciplinary penal process in respect of those matters not otherwise provided for in the Code or reserved to the Holy See.

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<sup>1</sup> Such offences have been reserved mainly to the Congregation for the Doctrine of the Faith (CDF). See Apostolic Constitution, *Pastor Bonus*, 28th June 1988, art 52, and Apostolic Letter *MP, Sacramentorum sanctitatis tutela*, 30th April 2001.

## **Preliminary Investigation [Stage 1]**

The penal process may be activated and penalties applied only insofar as canon law allows (can 221§3). Wrongdoing per se is not sufficient. It must also be shown that the conduct of which complaint is made represents an external commission of an offence which is gravely imputable<sup>2</sup>.

Having received information or an allegation which has at least the semblance of truth, the Diocesan Bishop, or his delegate<sup>3</sup>, must first investigate the nature and circumstances of the offence and whether the accused is implicated in the commission of the offence itself. He must open this preliminary investigation by means of a decree.

Following the gathering of this evidence it is for the Diocesan Bishop himself to consider:

- (i) whether it is likely that an offence has been committed;
- (ii) whether the accused is implicated in the commission of the offence; and
- (iii) whether having regard to all of the circumstances, it is necessary or appropriate to respond by way of process to impose a penalty through penal trial or administrative decree (can1718).

Throughout this process the Diocesan Bishop and those acting on his behalf must ensure that the reputation of those involved (e.g. accuser and accused) are not placed at risk of harm (can 1717§2).

For this and other reasons:

- (i) All documents arising out of this process must be maintained under the strictest confidentiality (can1719).
- (ii) All communications arising out of or in connection with the process, and indeed the process itself, must be confidential and shall not be subject to any public statement concerning the nature, cause or status of the investigation, without the consent of the accused person.
- (iii) Any delegate or other agent of the Diocesan Bishop involved in the conduct of the preliminary investigation who fails to act in accordance with such confidentiality shall be subject to penalty.

The conduct of a preliminary investigation, in terms of both its scope and duration, is to be regulated by reasonableness. In the conduct of this stage of the process therefore particular regard shall be had to the following principles:

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<sup>2</sup> Imputability refers to the subjective aspect of the offence, i.e. that it was committed voluntarily, consciously and freely. Imputability can arise from malice (the deliberate violation of a law or precept) or culpability (the omission of due diligence), cf can 1321§1.

<sup>3</sup> The delegate, who possesses the same rights and duties as an auditor within a canonical process, can in principle be either clerical or lay (can 1428§2). However, given the requirement of clerical personnel for a judicial process and the stipulation that in cases which could involve the reputation of a priest the notary must be a priest (can 483§2), it may be considered more appropriate that the delegate be a priest, depending on the nature of the allegation. In any event, the appointment should be confirmed in writing and the remit of the authority defined.

- (i) The preliminary investigation is not intended to constitute the trial of the alleged offence. Rather, it is concerned only with whether there is a case which the accused is required to answer and a judicial or administrative process embarked upon.
- (ii) In the interests of justice, the gathering of evidence shall also include evidence likely to exonerate the accused.
- (iii) The duration and scope of the investigation must be assessed by reference to the facts of each case. Clearly, reasonableness and proportionality will have different meanings depending upon the detail and timing of the alleged misconduct.
- (iv) Given the preliminary nature of the investigation, special care should be taken to ensure that the guilt of the accused has not been determined nor that there can be any suggestion of the process having been concluded at this stage. It is the possibility that there has been misconduct which is being explored, not actual misconduct.

Whilst the preliminary investigation is not a preliminary trial of the accused, every effort shall be made to inform the accused as to:

- (i) The fact that an investigation has been commenced.
- (ii) The nature of the allegation which has been raised against him.
- (iii) The identity of the parties instructed to carry out the investigation and the date upon which authority was delegated to them.
- (iv) The likely timescale of the preliminary investigation and the point at which it is anticipated that the Diocesan Bishop will be in a position to communicate his decision to the accused.
- (v) The privilege against self-incrimination.
- (vi) The rights and obligations of the accused during the investigation including, but not limited to, his right to continued financial support from the Diocesan Bishop and the provisions to be made for his welfare and accommodation.

Notice of such a process may generate a time of exceptional personal distress and confusion for the accused cleric. Accordingly, it is of the highest importance that there is both clarity and transparency of communications passing between the Diocesan Bishop and the cleric concerned.

To this end, the following practice should be observed:

- (i) The cleric shall have the right to be accompanied at any meetings to be held between the cleric and the Diocesan Bishop and/or the delegate of the Diocesan Bishop.
- (ii) At any meeting between the cleric and the Diocesan Bishop and/or his delegate a detailed minute shall be taken recording the terms, purpose and content of the meeting. Following the meeting the written minute shall be circulated to the cleric and his advisor for their agreement. In the event that there is disagreement as to the content or accuracy of the document, necessary amendments shall be noted and recorded in the document and signed by all parties present.
- (iii) Where the nature of the information or allegation requires the reporting of the information to any statutory or other body, a detailed record shall be maintained of the

date, purpose and terms of this communication together with the name of the person communicating the information.

### **Conclusion of the Preliminary Investigation [Stage 2]**

After gathering the evidence, if, in the opinion of the Diocesan Bishop, there is material to suggest that a reserved offence may have been committed, he shall submit all of the proofs and related documents to the Congregation for the Doctrine of the Faith.

In all other cases in which the Diocesan Bishop enjoys competence and where he has concluded that there is material indicating the commission of a canonical offence in which the accused is implicated, he shall:

- (i) Determine whether it is desirable or necessary for the matter to be the subject of some form of canonical process.
- (ii) Consider whether it is desirable to proceed by way of penal trial or administrative decree<sup>4</sup>.
- (iii) Issue a decree, which must be notified to the accused, confirming the conclusion of the preliminary investigation and its outcome (can1718).

### **Extrajudicial Decree [Stage 3]**

Where the Diocesan Bishop is satisfied there is just cause (can1342) and the universal law permits him to do so (can 1718§1,3<sup>o</sup>), he may proceed by way of decree rather than penal trial.

If the Diocesan Bishop chooses to proceed in this way, he shall:

- (i) Notify the accused of the detail of the case presented against him, together with the supporting evidence.
- (ii) Provide the accused with a reasonable period in which to prepare his defence to the allegations.
- (iii) Advise the accused of the privilege against self-incrimination.
- (iv) Advise the accused of his right to canonical representation and in the event that the accused does not appoint one, appoint one ex officio.
- (v) Fully consider the material and submissions relied upon by the accused and the fact that the material presented against him has not been challenged by appropriate questioning or other process.
- (vi) Issue a decree detailing his judgment, the reasons for it and the evidence upon which he relied, and the penalties imposed or declared.
- (vii) The accused shall be informed of his right to, and the manner of seeking, administrative recourse, with particular reference to the established time limits.

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<sup>4</sup> Although it is for the Diocesan Bishop to decide whether to proceed by way of penal trial or extrajudicial decree, the preference of the Code in penal cases is a judicial trial, cf can 1342§1. In cases which may involve the imposition and declaration of perpetual penalties or when the law or precept itself requires it, a penal trial must always be initiated, cf can 1342§2.

In all other respects, the form of the decree issued by the Diocesan Bishop shall comply with the provisions of the Code (cann 48-58 and can 1342).

#### **Commencement of the Penal Trial [Stage 4]**

Where the Bishop is satisfied that there is evidence which suggests the commission of a canonical offence<sup>5</sup>, the proper response to which is the imposition of some form of canonical penalty, and either the law requires the conduct of a penal trial, or, there is no justification for proceeding by way of administrative decree, he must initiate a penal trial. He must issue a decree to this effect.

Having issued this decree, the following process shall be followed:

- (i) The Diocesan Bishop is to transmit all of the material gathered during the Preliminary Investigation to the Promoter of Justice (can1721).
- (ii) A Judge will be appointed to hear the case<sup>6</sup>. The Judge must be a cleric and, where the matter may lead to dismissal from the clerical state, the case must be heard and determined by a collegiate tribunal of three Judges (can 1425§1), each of whom shall be a cleric.
- (iii) The Promoter draws up a formal petition outlining the conduct of which complaint is made, the parties implicated and the evidence relied upon (can 1504).
- (iv) Upon receipt of the petition, the Judge shall issue a decree confirming his acceptance of the petition and summoning the accused to trial (can 1507). A copy of the petition, containing a clear statement of the offences alleged, is to be attached to the decree.
- (v) Following representations from the accused and the Promoter the Judge or President of the Collegiate Tribunal shall by decree identify the questions requiring resolution and determination (can 1513) and provide a timetable for the provision of proofs and related evidence (can 1516).

#### **Conduct of the Penal Trial [Step 5]**

Within the conduct of a Penal Trial, the following principles shall be observed:

- (i) The burden of proving the commission of an offence rests with the Promoter (can 1526§1).
- (ii) The Judge(s) are entitled to question the parties and, indeed, may be requested by the parties to conduct such questioning (can 1530).
- (iii) Whilst a party may be required to answer questions posed, the accused is entitled to, and is to be reminded of, the privilege against self-incrimination. No adverse inference is to be drawn from a refusal to incriminate himself.
- (iv) Evidence is to be given on oath (can 1532), except that given by the accused (1728§2).

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<sup>5</sup> Other than one which is not reserved to the Holy See.

<sup>6</sup> Observing the norms of cann 1447-8. Where the subject matter relates to can 1395§2 the Judges should preferably be selected from outside the diocesan jurisdiction of the Diocesan Bishop.

- (v) Unless there is evidence to the contrary, public documents will be assumed to be valid (can 1541) and proof of the facts contained within them.
- (vi) Neither party shall be required to produce evidence or documentation where to do so would infringe canonical secrecy (can 1546§1).
- (vii) Witnesses must be examined before the tribunal unless the Judge(s) consider otherwise (can 1558). The advocate of the accused, but not the accused himself, may be present at the examination (can 1559).
- (viii) Having heard the parties, the Judge(s) may consider it opportune to visit a place or inspect something connected with the case<sup>7</sup>.
- (ix) When all the evidence has been gathered, the parties and advocates shall be permitted to inspect the documentation gathered by the tribunal and may adduce additional proofs concerning the matters contained within them (can 1598).
- (x) The accused and the Promotor are to make written submissions concerning the determination of the case<sup>8</sup>, with the accused or his advocate always having the right to write or speak last (can 1725).
- (xi) The standard of proof by which a case is to be decided is that of moral certitude (can 1608§1).
- (xii) Upon conclusion of the trial the Judge(s) will issue a formal judgment detailing the judgment reached, the reasons for the conclusion and the consequences for the parties and their respective rights (can 1612).

Any person who considers himself aggrieved by any sentence has the right to appeal (can 1628). The accused shall within the course of the judgment be advised of his right of appeal, the appropriate forum for determining the appeal and the time limit within which the right of appeal must be exercised (cann 1633 – 1634).

An appeal will have the effect of suspending any penalty or sanction imposed upon the accused (can 1638).

Source: “Disciplinary Penal Process” in Catholic Bishops’ Conference of England and Wales’ Directory on the Canonical Status of the Clergy (Catholic Truth Society, 2009:18, pp. 67-80)

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<sup>7</sup> Having followed the procedure in can 1582.

<sup>8</sup> In exceptional cases, this may take place orally – can 1602.