

Justice and Equity in Decisions Involving Priests

AUGUSTINE MENDONÇA, JCD

Introduction

Not too long ago there was in the minds of people a mistaken perception that the moment priests made their promise of obedience to their bishop or the religious pronounced their vow of obedience, they lost all their rights. They just obeyed, no questions asked. To what extent this perception was true could be disputed, but there is some element of truth in how some ecclesiastical superiors, not excluding some bishops, exercised their authority. Some bishops thought that their priests did what they ordered them to do solely in virtue of their promise of obedience. No consultation, no discussion! You simply obeyed! Such was the power bishops exercised over their priests or religious superiors over their subjects. We can no longer maintain or support such an archaic mentality. The Second Vatican Council wanted all Christian faithful to adopt a new disposition or attitude of mind (*novus habitus mentis*) in order to foster creative and fruitful mutual relationships in carrying out the redemptive mission of Christ in this world. This certainly includes bishops and priests.

In his Apostolic constitution *Sacrae disciplinae leges*, promulgating the 1983 Code, Pope John Paul II said the following in regard to the intrinsic relationship between the teachings of Vatican II and the (two) Codes:

The instrument, such as the Code is, fully accords with the nature of the Church, particularly as presented in the authentic teaching of the Second Vatican Council seen as a whole, and especially in its ecclesiological doctrine. In fact, in a certain sense,

the present Code can be viewed as a great effort to translate the conciliar ecclesiological teaching into canonical terms. If it is impossible perfectly to transpose the image of the Church described by conciliar doctrine into canonical language, nevertheless, the Code must always be related to that image as to its primary pattern, whose outlines, given its nature, the Code must express as far as is possible.¹

Some of the most important issues discussed with great interest in our times concern the dignity of the human person, its inviolability, and the rights and obligations inherent in it. The conciliar teaching on human dignity and rights of persons was eloquently proclaimed in the Pastoral Constitution on the Church in the Modern World, *Gaudium et spes*,² and in its Declaration on Religious Liberty, *Dignitatis humanae*.³ The General Assembly of the Synod of bishops made the issue of rights in the Church its focal point when it published the ten fundamental principles guiding the revision of the Code.⁴ Again, in the above-mentioned apostolic constitution *Sacrae disciplinae leges*, John Paul II said "that the mutual relationships of Christ's faithful are reconciled in justice based on *charity*, with the rights of each safeguarded and defined."⁵

¹ John Paul II, Apostolic Constitution promulgating the revised Code of Canon Law of 1983, *Sacrae disciplinae leges*, 25 January 1983, in *The Code of Canon Law*, New revised English Translation, London, HarperCollins Publishers, 1997, p. xiv.

² Second Vatican Council, Pastoral Constitution on the Church in the Modern World, *Gaudium et spes*, 7 December 1965, in *Acta Apostolicae Sedis* (=AAS), 58 (1966), pp. 1025-1120; English translation in Austin Flannery (General editor), *Vatican Council II*, vol. 1, *The Conciliar and Postconciliar Documents* (=Flannery I), New Revised Edition, Northport, NY, Costello Publishing Company, Dublin, Ireland, Dominican Publications, 1996, pp. 903-1001, especially pp. 913-924. Chapter I is wholly on "The Dignity of the Human Person."

³ Second Vatican Council, Declaration on Religious Liberty, *Dignitatis humanae*, 7 December 1965, in AAS, 58 (1966), pp. 929-946; English translation in Flannery I, pp. 799-812.

⁴ Synodus Episcoporum, "Principia quae Codicis iuris canonici recognitionem dirigant a Synodo Episcoporum probata," 7 October 1967, in Xaverius Ochoa (ed.), *Leges Ecclesiae post Codicem iuris canonici editae*, vol. III, *Leges annis 1959-1968 editae*, Roma, Commentarium pro Religiosis, 1972, no. 3601, col. 5253-5257, especially principles 5, 6, and 7.

⁵ *Sacrae disciplinae leges*, p. xv.

Being faithful to the teaching of the council, the Code has defined several rights of the Christian faithful which must be defended and vindicated according to the norms of law. Thus, for example, we read in c. 221:

§1: "Christ's faithful may lawfully vindicate and defend the rights they enjoy in the Church before the competent ecclesiastical forum in accordance with the law."

§2: "If any members of Christ's faithful are summoned to trial by the competent authority, they have the right to be judged according to the provisions of law, to be applied with equity."

§3: "Christ's faithful have the right that no canonical penalties be inflicted upon them except in accordance with the law."

And in c. 223, §1 we read: "In exercising their rights, Christ's faithful, both individually and in associations, must take account of the common good of the Church, as well as the rights of others and their own duties to others."⁶

From these fundamental norms of law, we can draw the following principles:

First, all Christ's faithful, irrespective of their social or ecclesial status, have certain inalienable rights in virtue of their personhood rooted both in natural law and in ecclesial law by baptism.

Second, nobody has the right to deny or prohibit the exercise of those rights without a *serious* and *just* cause.

Third, even when an action is considered necessary to curtail the exercise of such rights, Christ's faithful have the right to defend and vindicate them before the competent ecclesiastical forum in *accordance with the law*.

Fourth, when judged before a competent court, they have the right to be judged in accord with the provisions of law, *to be applied with equity*. It is in this principle that we find the meeting of *justice* and *equity*; and the Church correctly recognizes this as a *right*.

⁶ The translation of canons of the 1983 Code used in this study is from *The Code of Canon Law*, New revised English Translation, London, HarperCollins Publishers, 1997.

Fifth, the application of penalties must be done in strict compliance with the norms of law. This implies that the first consideration to be given by the judge in imposing or declaring ecclesiastical penalties is for the well-being of the person concerned, without of course neglecting the common good.

Sixth, a person's rights are not absolute. They are justiciable only within the context of the common good. Therefore, the law expressly states that, in exercising their rights, Christ's faithful, both individually and in associations, must take into account the common good of the Church, as well as the rights of others and their own duties towards others.

Any person who has the responsibility of making decisions which involve rights of persons in the Church ought to keep in mind these principles when exercising or fulfilling their functions.

In this brief study we will reflect upon the fundamental principles of justice and equity within the context of four concrete cases of *transfer*, *removal*, *suspension* and *dismissal* of priests by their respective bishops.

1 - TRANSFER OF PARISH PRIESTS

The bishop of Galloway (Scotland) decreed transfer of three of his parish priests against their will in a diocese-wide reshuffle of priests. The priests involved placed recourse all the way to the Apostolic Signatura against that decision. On 24 June 1995, the Signatura declared such action illegitimate (contrary to procedural law) and provided insights into the practical ways of effecting transfer of parish priests. It made two parallel statements concerning the central issues involved in the case.⁷

First, the Signatura stated that, as far as the bishop's discernment in the case was concerned, having in mind the needs of the diocese, the needs of the parishes involved in the transfers, the needs of the three priests and the needs of the presbyterate, the actions of the ordinary of the diocese seem to have been just and equitable.

⁷ The law section of the Signatura's decree, with an English translation, is published in *Forum*, 6 (1995) 2, pp. 117-122.

Second, as far as procedure was concerned, the *Signatura* found in favour of the three priests.

As a general observation, the *Signatura* stated that while the current practise in moving priests is sufficient in cases where all involved agree to the transfer, it is not so in cases where a priest was unwilling to transfer. In his decree, Agustoni, the Prefect of the *Signatura* at the time and the *Ponens* in this case, highlights the following principles on the matter:

First, the theological principles governing the revised canons on transfer and removal of parish priests are derived directly from the ecclesiological themes extensively discussed by the Second Vatican Council and gleaned from its decrees, especially "*Christus Dominus*."⁸

In no. 31, *Christus Dominus* stipulated that each parish priest "should enjoy that stability of office in his parish as the good of souls requires."⁹ While directing the abrogation of the distinction between *removable* and *irremovable parish priests*, the Council ordered that "the procedure for the transfer or removal of a parish priest should be reexamined and simplified so that the bishop, while observing the principles of *natural* and *canonical* equity, may more suitably provide for the good of souls."¹⁰

Second, the intention of the Council and the reason undergirding such directives are clear: On the one hand stability is required in the exercise of the office of parish priest since, under the authority of the bishop, the parish priests "are given, in a specific section of the diocese, [...] the care of souls as their particular shepherds,"¹¹ and they "should

⁸ Second Vatican Council, Decree on the Pastoral Office of Bishops in the Church, *Christus Dominus*, 28 October 1965, in AAS, 58 (1965), pp. 673-701; English translation in Flannery I, pp. 564-590.

⁹ "Parochi vero in sua quisque paroecia ea gaudeant stabilitate in officio, quam animarum bonum requirat." English translation adapted from Flannery I, p. 583.

¹⁰ "Quare, abrogata distinctione inter parochos amovibiles et inamovibiles, recognoscatur et simplicior reddatur modus procedendi in translatione et amotione parochorum, quo Episcopus, servata quidem *naturali* et *canonica* aequitate, aptius necessitatibus congruam sustentationem provideat" (ibid.). See Flannery I, p. 583 (emphasis added).

¹¹ CD, no. 30.

make their special concern to know their parishioners.”¹² The acquisition of such a knowledge on the part of the parish priest requires a suitable period of time. However, on the other hand, the good of souls should always be the supreme end so that, where and when necessary, the good of individuals or the good of the parish priests themselves, gives way to the good of souls.¹³

Third, the fundamental principle governing the stability in office of parish priests is stated in c. 522 which reads:

It is necessary that a parish priest has the benefit of stability, and therefore he is to be appointed for an indeterminate period of time. The diocesan bishop may appoint him for a specified period of time only if the Bishops' Conference has by decree allowed this.

This canon envisions two distinct modes of promoting and safeguarding stability in office: (a) a parish priest may be appointed for an indefinite period of time or (b) a determinate period of time. The second mode is allowed *only* where there is a decree issued by the competent Conference of Bishops and duly approved by the Apostolic See which prescribes the number of years for which the appointment of parish priest is made.

Therefore, the bishop who intends to proceed with the transfer or removal of a parish priest must first consider the juridical condition of his priest since the procedure must suit the same juridical condition: his juridical condition would be different at the lapse of the time period determined by the Conference of Bishops from other cases.¹⁴

Fourth, in view of the above general principles, the following points must be taken into consideration when dealing with the transfer of parish priests.

(a) In the case of an appointment of a parish priest for a determinate period of time made in accord with the decree of the Bishops' Conference, his office becomes vacant by reason of the lapse of time from

¹² Ibid.

¹³ C. Agustoni, 24 June 1995, p. 118, no. 4.

¹⁴ Ibid., pp. 118-119, no. 5.

the moment of written advice from the competent authority (cf. c. 186); but the provision for the *de iure* vacancy of the office can be made before hand according to the norm of c. 153,§2.

(b) Apart from the specific case mentioned above, there remains in force the fundamental principle declared in c. 153,§1: "The provision of an office which in law [*de iure*] is not vacant is by that very fact invalid, nor does it become valid by subsequent vacancy."

Therefore, except in the case mentioned in c. 153,§2, a parish cannot be entrusted to a successor until it is vacant.

(c) According to c. 190,§1, a transfer "can be made only by the person who has the right to provide both for the office which is lost and at the same time for the office which is being conferred." Since one cannot provide for an office which is not vacant (except in the case of c. 153,§2), neither can one provide for a transfer to the same. Here the reference of the canon is to the vacancy of the office *a quo*, that is the office *from which* the person is being transferred, and not to the vacancy of the office *ad quod*, that is the office to which the person is being transferred.¹⁵

Fifth, in the absence of a decree of the Conference of Bishops on this matter, the bishop must consider the following if he still wants to adopt "rotary transfers" of parish priests in his diocese:

(a) If a parish priest is agreeable to the transfer, the bishop must first request and accept his resignation according to law (c. 187-189), and then appoint him to another parish. But in the meantime the same parish priest can be appointed administrator of the parish from which he has willingly resigned until he takes possession of the new office.

(b) On the contrary, a number of difficulties could be raised by parish priests who are appointed for an indefinite period of time (or for a definite period of time outside the case of c. 153,§2). It is necessary that the parish *ad quam*, that is the parish to which the priest is being transferred, is vacant, *before* the procedure for transfer begins, otherwise such procedure would be illegitimate not because of the condition of the office from which the parish priest is being transferred [*terminus*

¹⁵ Ibid., pp. 119-120, no. 6.

a quo] but because of the condition of the office to which the parish priest is being transferred [*terminus ad quem*], which means that in such a situation the transfer would be made to an office which cannot be conferred because it is *de iure* not vacant.

Therefore, in order for the diocesan bishop to act not only *legitimately* but also *prudently*, he must ensure the resignation of the parish priest of the parish *ad quam* at the start of the procedure for transfer, albeit he may appoint the same parish priest as administrator until the transfer is completed.¹⁶

Sixth, according to c. 1748, the just cause for the transfer of a parish priest is: "the good of souls or the necessity or advantage of the Church."¹⁷ The same canon (1748) also presupposes that the parish priest satisfactorily governs the parish *a qua*, that is the parish from which he is transferred, otherwise it would constitute an act of removal rather than of transfer if his ministry in the parish *a qua* were to be harmful or ineffective (cf. c. 1740).¹⁸

Seventh, transfer can be made to another *parish* or to another *office*. Canon 2163 of the 1917 Code provided for the transfer of a *removable* parish priest to another parish which "is not of a very inferior rank" ("*non sit ordinis nimio inferioris*"). This norm was abrogated and therefore no longer tenable.¹⁹

Eighth, the procedure prescribed in cc. 1748-1752 should be diligently observed in cases of transfer, excepting the case foreseen in c. 153,§2, which does not concern a transfer in the proper sense.

Ninth, the same effect of recourse prescribed in c. 1747 for removal is also applicable to the case of a priest who has been "transferred." This implies that the parish priest who is *de facto* transferred, must abstain from exercising the office of parish priest, leave the parish house free as soon as possible (unless he is sick — cf. c. 1747,§2) and hand over everything to the person to whom the bishop will have en-

¹⁶ Ibid., pp. 120-121, no. 7.

¹⁷ Cf. also CD, no. 31.

¹⁸ C. Agustoni, 24 June 1995, p. 121, no. 8.

¹⁹ Ibid.

trusted the parish. However, while the recourse is pending, the bishop cannot appoint the new parish priest, that is, he cannot confer the office on another priest, but he is bound in the meantime to provide for the care of the parish through a parochial administrator. In the case of recourse, therefore, there is suspension of the decree of transfer "*secundum quid*," which means that as long as the parish is *de iure* not vacant the bishop cannot validly appoint another priest to that office.²⁰

Tenth, c. 1752 highlights the spirit which must motivate any action, including that of transfer of a parish priest. That spirit is *canonical equity* which urges the bishop to make his decision with kindness and compassion, and the parish priest to accept a just and equitable decision with mature obedience and priestly charity. Everything done in the Church must promote the salvation of souls, the supreme purpose of the Church's existence on earth.

In the above case, the bishop of Galloway withdrew the decree of transfer and invited all involved to adopt a spirit of reconciliation and trust in God's healing power. In his statement, the bishop stated:

- the bishop, having taken into account all the present circumstances of the situation, considers that it is right to withdraw the decrees of transfer and therefore does so;
- he invites all concerned to join him in looking to the future in a spirit of reconciliation and with trust in God's healing power;
- he asks for the continued prayers and support of the people of the diocese for himself and all the priests.²¹

It seems that as a result of this conciliatory approach adopted by the bishop, the three priests involved in the case accepted new transfers.

²⁰ Ibid., pp. 121-122, no. 9.

²¹ See Maurice Taylor [Bishop of Galloway], "A Statement by Bishop Taylor Regarding the Transfer of Three Priests to Other Parishes," in *CLSGB & I Newsletter*, No. 104 (December 1995), p. 22-23, here at p. 23. For a brief commentary on the Signatura's right to involve in disputes concerning transfer of parish priests, see Paul Hayward, "The Apostolic Signatura and Disputes Involving the Transfer of Parish Priests," in *ibid.*, pp. 24-32.

In concluding his brief study on the issue of removal and transfer of parish priests, F. Daneels observes:

As the procedure for a transfer is much easier than the procedure for a removal, there is sometimes the temptation to impose a transfer on a pastor, when the real issue at stake is his removal from office. This would constitute a serious violation of the law both *in procedendo* and *in decernendo*. Indeed the transfer presupposes that the pastor is governing his parish well and that the good of souls or the necessity or the advantage of the Church requires his transfer. If therefore the alleged reason for the transfer would ... be that the ministry of the pastor has become harmful or ineffective, then the decision of the bishop would no doubt violate the law.²²

The law makes it very clear that reasons for removal and transfer are radically different, and so are the procedures for effecting the two actions. There is no room for arbitrary decisions in these matters. Above all, as Daneels correctly points out, it would constitute a serious violation of the law if the bishop were to use the procedure of transfer outlined in cc. 1748-1752 for punishing a parish priest instead of the required penal process to impose a penal transfer.²³ The bishops must be aware of the consequences of the actions they perform contrary to the requirements of law.

2 - REMOVAL OF PARISH PRIESTS

Canon 522 declares that a parish priest is to be appointed for an indeterminate period of time. The same canon also provides for such an appointment for a specified period of time only if the Bishops' Conference has by decree allowed it. This stability of office of parish priest is directly linked to the spiritual needs of the people entrusted to the pastoral care of the parish priest. This stability of office, however, is not to be interpreted as absolute. Like any other ecclesiastical office, it can be lost through different modes established by law. The administrative removal of a parish priest is one such mode through which he

²² Franz Daneels, "The Removal or Transfer of a Pastor in the Light of the Jurisprudence of the Apostolic Signatura," in *Forum*, 8 (1997) 2, pp. 295-301, at page 300.

²³ *Ibid.*

can lose his office. It is distinguished from loss of office by law itself (cf. c. 194), which is more appropriately regarded as a penal remedy,²⁴ and penal removal (deprivation) from office indicated in c. 196.

The administrative removal of a parish priest is governed by strict procedural norms. The general principle governing loss of office stipulates that a person cannot be removed from an office conferred for an indeterminate or determinate period of time except for "grave reasons" and "in accord with the procedure defined by law" (cf. c. 193, §1 and §2). As for removal of a parish priest from his office, the law is very specific both in designating the reasons and in delineating the procedure to effect it in cc. 1740-1747. Because the action of removal of a parish priest from his office might incur substantial violation of his natural and/or acquired rights, the law identifies violation of certain elements of the process to be invalidating. Therefore, the bishop who considers the need for removal of a parish priest must proceed in accord with the norms of law in issuing the decree of removal. A bishop who acts blinded more by emotions and unsubstantiated allegations than with a sense of justice and equity will run the risk of having his decree overturned by the Apostolic Signatura. The case analysed in this section is evidence of such a scenario.

2.1 - Facts of the case²⁵

Father Anthony Pastrano was named parish priest of the St. Agnes' parish on 23 May 1984. The appointment was not limited by any term period. He came into this office with praise for the pastoral ministry he had done in his previous assignments. He took charge of the parish on 17 July 1984. In the parish house he came into, lived his predecessor after retirement. Moreover, there was in the parish a religious Sister, who functioned as a pastoral associate. Father Pastrano wanted to function independently of these two in his pastoral plans and ministry. This approach of Pastrano led to friction between him and the other two. This, together with other complaints, was reported

²⁴ See Luigi Chiappetta, *Il Codice di diritto canonico: Commento giuridico-pastorale*, Napoli, Edizioni Dehoniane, 1988, vol. 1, p. 253.

²⁵ *Supremum Signaturae Apostolicae Tribunal*, c. Palazzini, 17 December 1988, Prot. No. 18190 CA (unpublished).

to the bishop, who, without seeking any information directly from Pastrano, sent letters admonishing him about the problem with a reminder to radically change his behaviour. The complaints which the bishop received concerned mainly the following:

- too quick changes in the parish;
- too strong in criticising parishioners;
- tardy in listening to and collaborating with people;
- disdain for women;
- critical judgements destructive towards co-workers.

Because peace did not return to the parish, the bishop sent out another letter on 9 November 1984 and informed Pastrano that he had constituted a group of persons to hear the people of the parish. Moreover, he ordered him to announce this message in the parish bulletin. This was done and on 25 November 1984 the meeting took place.

Since he was not informed of the outcome of that meeting, Pastrano wrote on 1 February 1985 complaining that he had been deserted by his bishop from whom he had expected some support. He also accused his predecessor of leading the opposition against him in the parish, and pleaded with the bishop to have him removed from the parish house. On 5 February 1985, the bishop replied defending himself and reiterating the accusations against Pastrano whom he declared hostile and called for his resignation.

In his letter of 13 February 1985, Pastrano declared that he did not see any legitimate reason for resignation and emphasized the machinations of his predecessor. Moreover, he asked that the proceedings of the 25 November 1984 meeting be made available to him so that he could see the accusations made against him. He also wrote the same to the Apostolic Nunciature and to the Holy See explaining as well the history of his situation in the parish.

Finally, on 25 March 1985, the bishop briefly explained the reasons which suggested resignation, namely:

a) a manner of acting which causes grave harm to ecclesiastical communion;

b) loss of good name among *upright* and *serious* parishioners and *aversion* toward the parish priest which were foreseen as *not quickly coming to an end* (cf. c. 1741, 1° and 3°), and which have reached the point of threats.

In this letter, the bishop advised Pastrano to retain a lawyer.²⁶

On 27 March 1985, Pastrano wrote to the bishop saying that he wanted to remove him from office without due process contrary to all canon and civil laws. At this point the bishop, in his letter of 2 April 1985, proposed to entrust the entire matter to an arbitrator, a certain priest-psychiatrist. Although Pastrano resisted this arrangement at first, indicating that it was not proper to have a psychiatrist as an arbitrator (because the matter under consideration was of a juridic and not of a psychiatric or psychological nature), finally agreed and signed the document (without, however, indicating the day, month and year), through which the psychiatrist was appointed as arbitrator in this matter. But he attached certain conditions to this agreement, among which was the obligation on the arbitrator's part of communicating both to the bishop and to himself the reasons for the decision he would make as arbitrator. Pastrano complained to the arbitrator several times that he was not given an opportunity to read or hear the accusations made against him during the meeting held in the parish on 25 November 1984. The same complaint was reiterated during the meeting held

²⁶ It should be noted that canons dealing specifically with the removal of a parish priest do not speak of the services of an advocate. But the general principle stated in c. 1738 governing "Recourse Against Administrative Decrees" (cc. 1732-1739) is applicable to this procedure as well. But the question is at what point in time of the process of removal of a parish priest can the priest concerned seek such services? Daneels states the following in regard to this issue: "I note also that canon law acknowledges the right to use the services of an advocate or procurator in the case of hierarchical recourse against the removal of a pastor (c. 1738), but not yet during the procedure for his removal. At this stage of the procedure, therefore, a bishop may refuse to handle the case with the canonical consultant of the pastor and insist on handling the removal directly with the pastor himself. However this does not mean that the bishop could not agree to handle the case with the advocate of the pastor, but only that there is no obligation for the bishop to do so" (Daneels, "The Removal or Transfer of a Pastor," p. 299). Daneels seems to imply here two things: First, there is no provision for the services of an advocate to plead on behalf of the parish priest during the removal proceedings until the commencement of the recourse phase of removal, that is after the decree of removal has been issued by the bishop. Second, even though there is no obligation of the bishop's part to communicate with the advocate, there is no law which would prohibit him from doing so. But in a case of the kind we are dealing with, where the good name of a person is at stake, it would be most appropriate on the bishop's part to respect the intervention of an advocate whenever it is sought by a parish priest so that his natural and ecclesial rights may be properly defended before legitimate ecclesiastical authority.

between the bishop, the parish priest and the arbitrator. This meeting, held on 28 May 1985, proved futile.

The bishop blamed the parish priest for the failure of arbitration because he was not willing to accept the advice and warnings of the said arbitrator, declared prosecution of the process by his letter of 21 May 1985 and proceeded all the way to the issuance of the decree of removal on 1 July 1985. The parish priest placed recourse against that decree before the Congregation for Clergy which, on 4 March 1986, rejected the recourse. However the Congregation recommended to the bishop to confer on the respondent an appropriate office within the diocese taking into consideration his talents and capacity.

The respondent placed recourse against this decision before the Signatura, which by its decree of 9 February 1988 admitted the recourse and on 17 December 1988 pronounced its decision on the way the Congregation for Clergy had rendered its decision.

2.2 – Legal principles

In its decree, the Signatura briefly outlines the procedural principles applicable to case.

First, the removal from office of a parish priest must be done according to the special administrative procedure laid down in cc. 1740-1747 of the 1983 Code. This is not a penal process because the causes for removal may prescind from any serious fault of the parish priest in regard to the harmful or at least inefficacious ministry.

Second, the causes for legitimate removal listed in c. 1741 are merely demonstrative and not taxative. That means the bishop can consider other causes for removing a parish priest from his office provided that his ministry is rendered harmful or at least inefficacious, for the principal purpose of removal of a parish priest is the *good of souls*.²⁷

Third, once the bishop has conducted an objective investigation,

²⁷ "Causae ob quas parochus a sua paroecia legitime ab Episcopo dioecesano amoveri potest, in can. 1741 non numerantur taxative sed demonstrative, quia aliae causae praeter recensitas admittuntur, dummodo iudicio eiusdem episcopi ministerium parochi noxium vel saltem inefficax evadat. Nam agitur de remotione seu amotione parochi a paroecia in bonum animarum [...]" (c. Palazzini, 17 December 1988, n. 5).

he must discuss the issue with *two parish priests* chosen from among the group stably constituted by the presbyteral council proposed by the bishop. This discussion is only *consultative* and not *deliberative* in nature. Should the bishop decide that the removal must be done, he must *paternally* invite in writing or orally the priest to resign from office within *fifteen* useful days. This decree must give the reason and arguments (c. 1742, §1), and this is for the validity of the act.

The resignation may be pure and simple or conditional provided that the bishop can legitimately and really accept it (cf. c. 1743). This would avoid the process of leaving the parish without acrimony and in a more favourable condition. To be valid, such a resignation must be done in writing or orally before two witnesses (cf. c. 189, §1), and it lacks all force if it is not accepted within three months (cf. c. 189, §3-4).

Fourth, should the parish priest fail to respond within the predetermined time, the bishop must repeat the invitation, even extending the time period for response (cf. c. 1744, §1). If it is evident to the bishop that the priest has received the second invitation to resign, and has not been impeded in any way from doing so, or if the parish priest refuses to resign without offering any reasons, the bishop shall decree the removal (cf. c. 1744, §2).²⁸

Fifth, if the parish priest does not resign, but opposes the cause alleged in the invitation and its reasons, offering motives which do not seem sufficient to the bishop, in order to act *validly*, the bishop should:

- (a) invite the parish priest to inspect the acts and to gather contrary arguments in writing, and present even contrary proofs, if any;
- (b) then, after completing the instruction, if necessary, assess the matter together with the same two parish priests mentioned in c. 1742, §1, unless others are to be designated due to impossibility on their part;
- (c) decide whether or not the parish priest must be removed, and to issue the decree immediately about the decision whether affirmative or negative (cf. c. 1745).

²⁸ It seems the jurisprudence of the Signatura regards as an established principle that "the pastor is considered to have received the invitation to resign just the same, if he refuses to accept any communication of the bishop" (Daneels, "The Removal or Transfer of a Pastor," p. 298).

Sixth, the bishop should issue this decree in writing expressing the motives at least in a summary fashion (cf. c. 51), even if the motives are not explained in an analytic manner.²⁹

Seventh, if the parish priest feels aggrieved by the decision, he can place recourse against the definitive decree before the hierarchic superior of the one who issued the decree, within the peremptory time period prescribed by the canons (cf. cc. 1734, 1735, 1737).

Eighth, the pastor who has been removed, before placing the recourse, should seek from the bishop revocation or amendment of the decree. When such a petition is made, it is understood by that very fact that the suspension of execution of the decree is also requested (cf. c. 1734, §1).

Ninth, if the above-mentioned request has been received by the bishop, the author of the decree, he may within *thirty days*, issue a new decree by which he shall amend the preceding decree or shall reject the petition. In this case, the time period for recourse begins to run from the intimation of the new decree. If however, the bishop does not decree anything on the matter, the time period for recourse begins from the thirtieth day from the time the petition of the parish priest has reached the bishop (cf. c. 1735).³⁰

2.3 - Application of the principles

The Signatura's panel found several serious violations of law in the *procedure* and in the *decision* made by the bishop which was confirmed by the Congregation for Clergy.

In their preliminary observations, the judges pointed out that the acts of the case were regrettably incomplete. There was no copy of the report on the meeting held on 25 November 1984. Presumably the copy had been destroyed. Before the Congregation for Clergy could decide on the question of rejection or acceptance of the recourse, it usually seeks two opinions, and these were not found in the acts. The

²⁹ "Hoc decretum Episcopus ferre debet sripto expressis motivis, saltem summarie (cf. can. 51), licet motiva non sint analytice enucleata" (c. Palazzini, 17 December 1988, n. 10).

³⁰ Ibid.

bishop's behaviour seemed altogether peculiar and confused throughout the process.³¹

2.3.1 – Violation of law in procedure

First, the court considered it necessary to establish the moment when the entire process commenced in view of the complicated succession of events that occurred in this case. The court *rejected* the argument that the process began on 9 November 1984 when a Commission was appointed by the bishop to verify the cause for removal of the parish priest. The court clearly stated that on that day began only the preliminary investigation of the cause for removal and not the formal process for removal.³² There is no prohibition in law to conduct such an inquiry (cf. c. 1742, §1), but it should be done without detriment to the good reputation or name of the parish priest. Even when there is an investigation preceding a penal process, “care is to be taken this investigation does not call into question anyone’s good name” (c. 1717, §2).

Second, one of the two reasons adduced by the bishop in issuing the decree was: “the loss of the parish priest’s good name among *upright* and *serious-minded* parishioners.” The court argued that the determination of this factor in this case was questionable, because it was not clear whether all those who participated in the meeting of 25 November 1984 had such *upright* and *serious-minded* attributes, particularly in the presence of the retired parish priest and the Sister. Unfortunately the proceedings of this meeting were destroyed at the bishop’s order, which amounts to destruction of proof.³³

Third, one cannot deny the fact that the public manner in which the investigation was conducted after being announced in the parish bulletin harmed the good name of the parish priest. Furthermore, a second Commission “to investigate the health of the parish priest” was added to the first one which included first a psychologist and then a priest-psychiatrist. In this way, the investigation must be said to have

³¹ Ibid., no. 11.

³² Ibid., no. 13.

³³ Ibid., no. 14.

begun with a prejudicial opinion.³⁴

Fourth, when the investigation is complete, the Code (c. 1742, §1) admonishes: "If an investigation shows that there exists a reason mentioned in c. 1740, the Bishop is to discuss the matter with *two parish priests*, chosen from a group stably established for this purpose by the council of priests at the proposal of the Bishop." This consultation is required for the validity of the process.

In this case it was difficult to determine when such a consultation had taken place. The bishop spoke about this matter first with "pastoral vicars" on 24 January 1985 and then with the "parish priests consultants" on the 25th and 29th of the same month. But it is not clear whether these were in fact chosen stably by the presbyteral council from among the group proposed by the bishop.³⁵

Fifth, if from the consultation it is considered necessary to decree the removal, the bishop should *paternally* invite the parish priest, either in writing or orally, to resign within fifteen days, by indicating the reason and the arguments, and this is for the validity of the act (c. 1742, §1). In this case, the bishop neither indicated the time period for resignation (cf. c. 1742) nor the precise cause and arguments suggesting the need for such a resignation.³⁶ The judges also found unsatisfactory the discussion held on 13 March 1985 by the bishop in order to weigh the contrary reasons proposed by the parish priest and not in conformity with the norm of c. 1745. Indeed the bishop had not invited the parish priest to inspect the acts and to present contrary reasons, if he had any. This is required by c. 1745 for validity of the decision. It was only in his letter of 25 March 1985 that the bishop explained precisely the reasons for removal, and this was indeed the first juridic act he had placed after the investigation was done. It was in this letter that all the elements required by c. 1742, §2 were included. The parish priest was advised through this letter to resign from office within a determined period of time (although more than fifteen days) or to propose contrary reasons.³⁷

³⁴ Ibid., no. 15.

³⁵ Ibid., no. 16.

³⁶ Ibid., no. 17.

³⁷ Ibid., no. 18.

At this point in time, the process was suspended through the efforts of arbitration which proved unsuccessful. Therefore, the process was reopened on 31 May 1985. The letter reopening the process contained certain contradictions: on the one hand it was stated in it that the contrary reasons offered by the parish priest had been discussed with "parish priests consultors" on 12 March, but on the other hand the parish priest was advised in the same letter to inspect the acts and to bring forward any contrary reasons. If this was true, the bishop should have recalled the two parish priests to weigh the matter after receiving from the parish priest contrary reasons or arguments (c. 1745).³⁸

Therefore, the process itself must be considered incomplete. Moreover, several acts on which the process was based also must be declared invalid.

The decree of removal itself must be said to have been issued illegitimately, since "there was no prior discussion by the bishop with two parish priests consultors stably constituted and selected by the presbyteral council after being proposed by the bishop."³⁹

2.3.2 - Violation of law in decision

The decree of the bishop provided two reasons for the removal of the parish priest:

- a) a manner of acting which causes grave harm to ecclesial communion;
- b) loss of good name among *upright* and *serious-minded* parishioners, which is foreseen as not quickly coming to an end.

The court, however, said that as far as the first reason was concerned, the decision of the bishop was clearly precipitous because it was made without taking into consideration the difficult situation in which the parish priest was placed. The bishop had regarded him as a "fine priest and fine pastor" prior to his appointment, and the parish priest sought his bishop's assistance which he did not find in the bishop.

³⁸ Ibid., no. 19.

³⁹ Ibid., no. 20.

The peace which the bishop expected to return to the parish after the removal of the parish priest was not realized as in a very short period of time thereafter there followed a succession of administrators.⁴⁰

In regard to the second accusation, the court said that not all who participated in the public meeting could be regarded as *upright* and *serious-minded*. Therefore, the decision of the bishop could not be considered to have been made with due consultation. Rather the manner of proceeding had harmed the good name of the parish priest in violation of the norms of c. 1717, §§1-2, which must be followed in a penal process; *a fortiori* those norms must be considered valid also in an administrative process.

Moreover, the use of a psychologist in the commission of investigation and then of a psychiatrist as an arbitrator implied that the fault rested entirely on the parish priest, and the insinuation was that his pathological mental state was the root of all evils.⁴¹

The judges also considered the decree of removal as excessive, because in it the bishop had attached a threat of penalty of suspension against the parish priest if he failed to leave the parish within four days. The decree was dated July 1st to be effective on July 5th.

The judges appropriately state: "No one can be punished for the commission of an external violation of a law or precept unless it is gravely imputable by reason of malice or of culpability (c. 1321, §1). Nor can one say that the penalty in this case is threatened and subordinated to possible condition of disobedience. Although this manner of proceeding is not *expressly* contrary to the canons, it is at least contrary to the spirit of the law."

The penalty which was threatened was that of suspension; on the contrary it was stated that the penalty would be imposed in accord with the norm of c. 1331 §1, which in fact concerns the penalty of excommunication.

⁴⁰ Ibid., no. 21.

⁴¹ "Quodammodo laesiva bonae famae parochi fuit etiam convocatio psychologi in commissione investigativa et, dein, psychiatrae tanquam arbitri: hoc modo inde ab initio insinuebatur causam omnium malorum esse posse anomalum statum mentalem ipsius parochi" (ibid., no. 22).

Moreover, the suspension threatened was unlimited which is contrary to the norm of c. 1334, §2. According to this canon, a precept of automatic suspension cannot be imposed without adding determination or limitation.⁴²

Therefore, the act of the Congregation for Clergy was found in violation of the law in *procedure* as well as in *decision*.

3 - SUSPENSION FROM PRIESTLY MINISTRY

Suspension is a canonical (medicinal) penalty which affects only clerics. It consists in the prohibition of all or some of the acts of the power of order; all or some of the acts of the power of governance; the exercise of all or some of the rights or functions attached to an office (c. 1333, §1). It can be imposed or declared through a judicial or an administrative procedure "only when he [the Ordinary] perceives that neither by fraternal correction nor reproof, nor by any method of pastoral care, can the scandal be sufficiently repaired, justice restored and the offender reformed" (c. 1341). The imposition or declaration of this penalty through an extra-judicial decree is justified whenever there are just reasons against the use of a judicial procedure (c. 1342, §1). However, the law makes it very clear that perpetual penalties cannot be imposed or declared by means of a decree (c. 1342, §2). This stipulation would naturally imply that suspension cannot be imposed for an indeterminate period of time or as a perpetual penalty by means of a decree.

Suspension from all or some of the acts of the power of orders or of the power of governance is different from a declaration of a cleric's unsuitability (*inhabilitas*) for priestly ministry. According to c. 1041, 1°, a person is irregular for the reception of orders, who suffers from any form of insanity, or from any other psychological infirmity, because of which he is, after experts have been consulted, judged *inhabilis* for properly fulfilling the ministry. And c. 1044, §2, 2° declares those clerics who are impeded from exercising sacred orders. Among these is the one who suffers from insanity or from some other psychological infirmity until such time as the ordinary, having consulted an expert, has

⁴² See *ibid.*, no. 23.

allowed the exercise of the order in question. The declaration of an “irregularity to receive orders” or an “impediment to exercise them” by the ordinary is an administrative act whose object is not a penalty. Therefore, the institutes of suspension, which is essentially a canonical penalty (a censure) and declaration of “irregularity” or “impediment” to receive or exercise order(s) are two distinct modes of canonical action. This implies that the procedures to be followed in implementing the two actions are different in nature and consequences.

The following case illustrates to some extent the intricacies of the procedures involved in both actions and the law’s insistence on taking into consideration all the vicissitudes of a given case while deciding on the issues involved.

3.1 – Facts of the case⁴³

Father Joseph performed pastoral ministry for seventeen years in different parishes. Even though his ministry was commonly considered as praiseworthy, the frequent changes of parishes suggested that the priest had some problems. Two situations called into question his priestly ministry.

In 1978, a woman accused him of molesting her son. A few years later a young man accused him of dishonesty; this accusation was widely diffused through the mass media.

When he came to know of these charges, in accordance with the diocesan policies in force at the time, for the good of the faithful of his diocese, the bishop ordered Father Joseph to undergo an assessment and treatment at St. Mary’s psychiatric institute. Although at first resistant to the order, Fr. Joseph agreed and had the required assessment done at that hospital. The report of the hospital prescribed, among other things, that Father Joseph should go to the home of St. Xavier for treatment. Father Joseph vehemently opposed this suggestion.

In the meantime, the civil court decreed that the charges against Father Joseph were not to be pursued for lack of proof and, furthermore, the young man involved in the case was above the age of 18 years.

⁴³ *Supremum Signaturae Apostolicae Tribunal*, c. Mercieca, 31 October 1992, Prot. No. 22571/91 CA (unpublished).

The bishop, however, insisted on Father Joseph's taking treatment at St. Xavier home, which Father Joseph resisted giving several reasons for doing so. The bishop warned Father Joseph that he would not be assigned to any office in the diocese unless he went to that home for treatment: "Given the assessment in the evaluation ... it is impossible to assign you to a position of pastoral care in this diocese." Finally, the bishop prohibited Father Joseph from publicly exercising his ministry saying: "I say to you now that you may be prepared to face the possibility that you will not be permitted to exercise priestly ministry."

Father Joseph reported the matter to the Congregation for Clergy in order to present a case against the bishop. The bishop himself reported his side of the story to the Congregation. In the meantime, the bishop agreed to let Father Joseph go to another home for treatment. Accordingly Father Joseph went to St. Jude's home. The report of this home completely contradicted that of the St. Mary's psychiatric hospital. The bishop was not pleased with it. He denied that St. Jude's institute had any reputable authority; therefore he considered that report as having little value to the case.

On 15 February 1991, the Congregation for Clergy confirmed the action of the bishop against Father Joseph, who placed recourse against such a decision before the Apostolic Signatura. This recourse was accepted on 20 February 1992, and a definitive decision was pronounced by a panel of six judges of the Signatura on 31 October 1992.

3.2 - Legal principles and their application

The judges of the Signatura focussed their deliberations on three specific issues: first, the order given to Father Joseph to go for treatment at St. Xavier's home which he always refused; second, the denial on the bishop's part to assign Father Joseph to any office in the diocese; third, the prohibition imposed on Father Joseph, due to his alleged *inhabilitas*, from publicly exercising sacred orders.⁴⁴ Following is the analysis of the facts and legal principles the judges considered in arriving at their decision in the case:

⁴⁴ Ibid., p. 4 (of the original text): "Cardo quaestionis triplex est, nempe, iussum datum [...] ad curam faciendam apud domum S. cui hic sacerdos semper restitit, et consequens negotio collationis officii in dioecesi necnon prohibitio, ob adsertam inhabilitatem, exercendi publice Sacros Ordines."

First, the bishop had rejected the psychiatric report from St. Jude's institute because it did not have a good reputation in psychiatric practice. The bishop wrote to the Congregation for Clergy: "The very brief statement from St. Jude's institute appears to be of no serious assistance in arriving at a justifiable and supportable conclusion." The judges found these observations very weak because the two institutes had used different methods in assessing the subject.

Second, the civil court had decided not to pursue the charges brought against the priest by the young man not because he was above 18 years of age but because of lack of proof. Besides, the report of St. Jude's institute corresponds substantially to that of St. Mary's psychiatric hospital which, after taking everything into account, concluded that the accusation concerning immoral acts alleged by the young man to be untrue. Both reports excluded "homosexuality" or "any other form of perverse sexuality."

It seems Father Joseph was resisting to go to St. Mary's psychiatric institute because they "treated my life of celibacy and its discipline and my approach to living celibacy as a positive methodology, negatively ... They did not take into consideration my theological training and disciplines of priestly life." Therefore, when the bishop wanted him to go to St. Xavier's institute, the priest insisted: "I would like to have a second opinion from a local Catholic Christian psychologist or psychiatrist."

Third, the accusation made by the woman was withdrawn; the accusation brought in by the young man proved to be untrue in light of the reports provided by the psychiatric institutes. Since there were no other accusations of the kind, the young man was considered not trustworthy.

The judges felt that while all disputed matters could have been settled peacefully, the bishop had adopted a rigid attitude and denied Father Joseph assignment to any office in the diocese and also forbade him from publicly exercising any ministry. In his letter of 24 July 1989 to the Congregation for Clergy, the bishop wrote: "In short, it would be morally impossible to assign Father Joseph, who is in need of serious psychological treatment, to the pastoral care of the faithful in the Church."

Fourth, after reviewing all elements of the process, the judges concluded that the bishop had failed to warn the priest in accord with

the requirement of c. 1347, §1 which is necessary to validly impose a penalty. There were absolutely no proofs to demonstrate clearly that some precept was imposed on Father Joseph with a determined penalty (c. 1319, §1) giving him sufficient time to amend his ways. All these elements are necessary for the validity of the decision.

There was in this case no semblance of any penal trial: there was no preliminary investigation (cc. 1717-1719); there was failure on the bishop's part to act according to the norm of c. 1718; there was no decree establishing the guilt on the part of Father Joseph; the facts which were the basis of accusation against the priest did not come within the scope of c. 1395, §1 and §2. Nowhere in its decree did the Congregation for Clergy discuss the connection between the prohibition imposed on the priest and the accusation of immoral acts.

Therefore, the decree of the Congregation for Clergy erred both in law and in decision.

3.3 – *Restitutio in integrum*

This decision of the *Signatura* was immediately appealed by the bishop by way of a request for *restitutio in integrum* for reason of serious errors related to facts used in making the decision, and those errors clearly indicated injustice. Through his advocate, the bishop presented more documents in support of his contention. After a careful review of the facts of the case a new panel of seven judges granted *restitutio in integrum*.⁴⁵ The *ponens* for this panel was E. Davino. In his sentence Davino makes two important preliminary remarks:

First, this is not a penal case. The bishop had clearly stated that the interdict against exercising orders was not imposed on the priest as a penalty but only as an administrative act in consequence of the psychological state of the priest. In view of the psychological report he had received on the priest's health, the bishop had judged the priest *inhabilis* to properly exercise orders.⁴⁶

⁴⁵ *Supremum Signaturae Apostolicae Tribunal*, c. Davino, 24 July 1995, Prot. No. 22571/91 CA (unpublished).

⁴⁶ *Ibid.*, no. 2.

Second, the apparent lack of interest on the bishop's part in the case while it was discussed at the Signatura during the preceding instance was not to be attributed to any fault of his, but rather to some confusion he was led into without any fault or negligence.⁴⁷

Third, according to c. 1629, 1^o, there is no appeal against a judgement of the Apostolic Signatura. This principle would imply that such a judgement is *res iudicata*. The Signatura's present panel had to justify its intervention in a case on which a judgement had already been pronounced by the preceding panel. Therefore, Davino's statement on this matter states: "First of all, we consider as resolved the question concerning the faculty of proposing a petition for *total reinstatement* against the definitive decisions of this Supreme Tribunal, since such a faculty has indeed been recognized already more than once."⁴⁸

Fourth, the *restitutio in integrum* is an extraordinary remedy against an obviously unjust decision which has become *res iudicata*. Natural equity demands that such injustice be remedied by restoring the *status quo* which existed prior to the alleged injury. This action, however, presupposes a valid sentence against which no appeal or plaint of nullity is possible. In accord with the norm of c. 1645, §2,2^o, it is allowed, among other situations, when "documents are subsequently discovered by which new facts demanding a contrary decision are undoubtedly proven." According to established canonical opinion, "this proof which may be derived from the newly acquired documents must be definitive against which there can be no probable exceptions."⁴⁹

Fifth, c. 1044, §2,2^o declares as impeded to exercise sacred orders those who suffer from insanity or from some other psychological infirmity mentioned in c. 1041, 1^o until such time as the ordinary, having consulted an expert, has allowed the exercise of the order in question. And c. 1041 spells out those who are irregular to receive sacred orders.

⁴⁷ Ibid.

⁴⁸ "Praeprimis solutam habemus quaestionem de facultate proponendi petitionem restitutionis in integrum adversus decisiones definitivas huius Supremi Tribunalis, cum revera facultas eiusmodi non una vice iam agnita (cf. prot. Nn. 18190/86 C.A.; 22221/86 C.A.)" (ibid., no. 3).

⁴⁹ "[...] probatio quae deducatur ex documentis noviter repertis oportet ut sit peremptoria, contra quam probabiles exceptiones fieri non possint ..." (ibid., no. 4).

Among such persons is one who suffers from any form of insanity, or from any other psychological infirmity, because of which, after experts have been consulted, he is judged *inhabilis* to properly fulfill the ministry (c. 1041, 1°). Two other canons relevant to this case are c. 1029 and c. 1741, 2°. The former reads: "Only those are to be promoted to orders who, [...] enjoy [...] the other physical and psychological qualities appropriate to the order to be received." And the latter lists the following cause for the removal of a parish priest from the parish: "inaptitude or permanent illness of mind or body, which makes the parish priest unequal to the task of fulfilling his duties satisfactorily."

From the above canonical principles, the judges draw the following conclusion: The priestly state demands on a person's part the capacity to exercise orders, that is to properly fulfill his ministry. Such a capacity entails qualities which enable the cleric to fulfill his functions usefully, that is, on the one hand without any harm to Christ's faithful and on the other hand effectively, that is fruitfully. Therefore, those factors which hinder a cleric from properly providing for the care of souls, whether it be due to insanity or due to any kind of mental disorder, can constitute an impediment to the proper exercise of the ministry of clerics.⁵⁰ It is the duty of the bishop to make appropriate decision on such matters and to see that presbyters "fulfill the obligations proper to their state" (c. 384), and to ensure that "abuses do not creep into ecclesiastical discipline, especially concerning the ministry of the word, the celebration of the sacraments and sacramentals" (c. 392 §2).

The preceding sentence of the *Signatura* had drawn four conclusions from the facts now reviewed by the present panel in light of new documents:

a) "... the priestly ministry of Father Joseph exercised for several years was, in the opinion of all, praiseworthy." Contrary to this conclusion, Davino's panel found that even Father Joseph admitted difficulties in exercising his priestly function, although he always attributed those difficulties to the fault of others. The letters presented by the bishop clearly indicated that the priest had difficulties in the exercise of his ministry which are to be attributed to his mental instability.⁵¹

⁵⁰ Ibid., no. 5.

⁵¹ Ibid., no. 7.

b) "The accusation made by the first woman was abandoned by her, and the accusation which the young man made turned baseless in view of the sentence of the civil court and the reports of St. Mary's psychiatric hospital and St. Jude's institute."

The judges here found the following evidence: In 1978, an expert, at the request of the former bishop, after the mother had accused Father Joseph of molesting her son, interviewed the priest and obtained from him, although in ambiguous words, a confession concerning the corporal examination of the boy. The mother agreed to withdraw criminal charges after the intervention of the parish priest, the bishop at the time, and the diocesan civil lawyer. But when ten years later the young man brought action against the priest alleging sexual molestation, the very woman confirmed her previous accusations under oath.

In regard to the accusation of the young man, the following was noted. The preceding sentence said that the civil court had decreed not to pursue the case precisely because of lack of proof. But the court had only declared: "... no basis for criminal prosecution essentially for the following reasons... a) no corroborating evidence was found." However, at the same time when the case was being judged at the *Signatura*, a civil case against the priest and the diocese was in fact pending in another county. The case was not pursued because the diocese agreed to resolve the controversy extra-judicially as the accusations were found to be "credible and convincing."⁵²

c) "The refusal of Father Joseph to go to St. Xavier's institute for treatment are supported by arguments worthy of all consideration."

The priest refused to go to St. Xavier's institute because they "treated my life of celibacy and its disciplines and my approach to living celibacy as a positive methodology, negatively..."

The facts contradict this statement of the priest:

i) St. Xavier's institute is not the St. Mary's psychiatric institute. It is in no way dependent on it.

ii) It was clear from a document recently found by the bishop that already in 1978, the expert had written: "It is my present strong recommendation that Father Joseph continue with therapy ..."

⁵² Ibid., no. 8.

iii) The expert consulted by the Signatura's panel recommended, besides spiritual help, psychological treatment to resolve intrapsychic conflicts which had led to the situation involving the alleged episodes. He also suggested that the psychotherapeutic treatment be followed with persons professionally qualified and indicated by *ecclesiastical authority*; rather than persons of the priest's choice. Therefore, the bishop had rightly insisted on the priest's going to St. Xavier's institute which the priest refused.⁵³

d) "... no psychiatric report ... considers Father Joseph to be *inhabilis* to exercise sacred orders."

It is sufficient to note the following: It is the ordinary who can permit and, in certain circumstances, prohibit the exercise of orders. He must use the help of experts "*to establish* some fact or to ascertain the true nature of some matter" (c. 1574). In this case, "some fact" or "the true nature of some matter" is not the *habilitas* (*suitability*) or *inhabilitas* (*unsuitability*) to exercise orders, but rather the existence of some mental illness of a disordered nature. When the existence of some mental illness or disorder is proved with certainty, a person may be considered *inhabilis* (*unsuitable*) to exercise orders according to the judgement of the ordinary.⁵⁴

In view of these observations the judges felt compelled to grant *restitutio in integrum* according to the norm of c. 1645, §2, 2°, since the recently discovered documents undoubtedly demand a contrary decision.⁵⁵

According to c. 1648, "where total reinstatement is granted, the judge must pronounce judgement on the merits of the case."

The Signatura's panel of seven judges went on to declare that the bishop had not acted in violation of the law either in *procedure* or in *decision* when he ordered Father Joseph to go for treatment at Xavier's home or when he refused to appoint him to any office in the diocese or finally when he prohibited him from exercising publicly the sacred orders on the basis of his "unsuitability" (*inhabilitas*). He had acted pru-

⁵³ Ibid., no. 9.

⁵⁴ Ibid., no. 10.

⁵⁵ Ibid., no. 11.

dently for the good of the priest and for the common good, that is the salvation of souls.⁵⁶

4 – DISMISSAL FROM THE CLERICAL STATE

A cleric may lose his clerical state in three ways: (a) by a judgement of a court or an administrative decree, declaring the ordination invalid; (b) by the penalty of dismissal lawfully imposed; (c) by a rescript of the Apostolic See (c. 290). The case discussed in this section is an example of the second hypothesis.

As an expiatory penalty perpetual in nature, dismissal from the clerical state cannot be laid down by particular law (c. 1317), nor can it be threatened via a precept (c. 1319, §1) or imposed or declared by means of a decree (c. 1342, §2). The spirit underlying the Church's penal law clearly implies that the decision made in regard to the imposition or declaration of such a serious penalty must reflect the principles of justice, equity, and evangelical charity. The following case presents to us a concrete scenario in which an interplay of strict justice and equity seems clearly evident in the two decisions pronounced by the Church's courts on the dismissal of a cleric from his clerical state as a penalty for committing the crime mentioned in c. 1395, §2.

4.1 – Facts of the case⁵⁷

Father John was ordained in 1978. From July 1978 to 1986 he did his pastoral ministry in a parish. From 1988 to 1990 he was assigned to hospital ministry. It was at this stage that all faculties were withdrawn and he was prohibited from celebrating Mass.

Several accusations against Father John were received from the very beginning of his ordination involving serious violation of the prescription of c. 1395, §2. All warnings and penal remedies proved futile. Finally the ordinary decided to initiate the penal procedure, and the action was instituted by the promotor of justice. On 18 February 1990, the petition was accepted by the Collegiate tribunal which was constituted by the bishop for this case.

⁵⁶ Ibid., nos. 12 and 13.

⁵⁷ Decision c. Colagiovanni, 14 June 1994, in *ME*, 122 (1997), pp. 90-95.

On 2 April 1992, the grounds of accusation were determined thus:

(a) Whether John offended against the sixth commandment of the decalogue with minors under the age of sixteen?

(b) If he is found to have committed such an offense or offenses, what penalties, if any, should be applied?

After completing the instruction of the case through the acquisition of several complaints against the respondent concerning sexual crimes against minors below the age of sixteen and after considering both the violations of c. 1395, §2, and the penal and spiritual remedies as well as the psychological treatments he had received, the court responded to the doubts on 26 August 1993 as follows:

- *Affirmative*, to the first (there was proof of accusations).
- *John is dismissed from the clerical state* – to the second.

On 2 September 1993, the respondent appealed to the Apostolic Signatura which remanded the case to the Roman Rota. On 9 April 1994, the rotal *turnus coram* Colagiovanni determined the terms of the controversy as follows: "Whether the respondent had violated the prescription of c. 1395, §2 and indeed had perpetrated the crime mentioned in the canon with a minor below the age of sixteen, and if the response is affirmative, what penalty should be imposed, that is whether the sentence of first instance should be confirmed or overturned."

The sentence of 14 June 1994 by Colagiovanni is quite brief but very precise in its explanation of the legal principles and their application to this particular case.

4.2 – Legal principles

In the law section of his sentence, Colagiovanni outlines several important juridical principles concerning three issues, namely: (a) The concept and finality of penal law; (b) Imputability of the crime; and (c) The predisposing factors.

(a) *The concept and finality of penal law:* First, Colagiovanni admits that in recent years there has been a serious controversy in regard to the concept and finality of penal law in the Church. Three principal goals are being pursued in the application of penalties in the Church, namely, reparation of the scandal, restoration of justice, and conversion of the guilty (c. 1341).

This is the principal aim of *medicinal* penalties (cf. c. 1312, §1,1°; cc. 1331-1333).

While through *expiatory penalties* (cf. cc. 1312, §1,2°; 1336) the demands of justice and good of the Church are restored through the reparation of scandal, in *medicinal penalties* the reparation of scandal is in some way included in the penitent will, and therefore, in the willing disposition of the penitent restitution of justice is also achieved.

In *expiatory penalties*, however, the penalty has a significance autonomous from the will of the delinquent. This goal was more explicitly expressed in the 1917 Code through more severe expressions under the term: "vindictive penalties." But in all penalties, the ultimate goal to be pursued is "the salvation of souls."

Second, c. 1342, §1 declares the general principle that penalties can be imposed or declared "through an extra-judicial decree." But the second paragraph of the same canon *excludes* perpetual penalties from the provision of extra-judicial decree. Therefore, in case of c. 1395, §2, only a judicial process is allowed.

Third, recourse to penalties must be made only when *fraternal correction* or other pastoral approaches have proved futile (c. 1341). Moreover, even though the perpetrator of a crime is not to be exempt from penalty, the penalty described in the law or precept must be diminished, or a penance substituted in its place, if the offence was committed by persons under extenuating personal circumstances (cf. c. 1324, §1). In such circumstances the judges can invoke "equitable pastoral economy"⁵⁸ in imposing penalties that are suitable to the condition of the delinquent. This principle is of much importance to the solution suggested by the *turnus coram* Colagiovanni in this case.

Fourth, in order to impose a penalty, the judge must have *moral certitude* derived from the acts and from the proofs concerning the commission of the crime, its gravity and imputability (cf. c. 1608).

⁵⁸ "At etiam in poenis applicandis ordine juridico servato, illae poenae irrogandae sunt quas sufficere iudices tenent quin ad graviores applicandas procedant, in aequa oeconomia partorali continendas, prae oculis habitis circumstantiis ipsam personam attingentibus eiusque libertatem et responsabilitatem imminuentibus recensitis in canone 1324, §1" (ibid., p. 92).

Fifth, the judicial confession against oneself from the accused (c. 1535), where the public good is not at stake, relieves the other party of the onus of proof (c. 1536, §1). However, testimonies, documents, expertise, etc., will certainly be useful in determining the objective gravity of the delict and the imputability, that is the extent of freedom exercised in violating the law.⁵⁹

(b) Imputability of the crime: Colagiovanni explains, citing *Diagnostic and Statistical Manual of Mental Disorders*,⁶⁰ that there is no doubt that pedophilia must be considered one among the more serious deviations or disturbances of personality. According to the said *Diagnostic and Statistical Manual*, such an attraction of instinct is one of the "Sexual Disorders"⁶¹ which "is recurrent, intense sexual urges and sexually arousing fantasies of at least six months' duration involving sexual activity with a prepubescent child ... The age of the child is generally 13 or younger ... same sex, opposite sex or same and opposite."⁶²

In this case it was not pure homosexuality, because the accused had committed serious violations against the sixth commandment with boys as well as girls. In fact, his sexual disorder was joined in with fetishism.

Colagiovanni argues that without doubt such "intense sexual urges," because they constitute a true psychic pathology, diminish one's freedom and lessen the responsibility.

It is a progressive disorder: "The course is generally chronic, especially in those attracted to boys. The frequency of pedophilic behavior often fluctuates with psychological stress. The recidivism for people

⁵⁹ Ibid.

⁶⁰ *Diagnostic and Statistical Manual of Mental Disorders*, (Third Edition Revised) [DSM-III-R], Washington, DC, American Psychiatric Association, 1987, pp. 279-296. It should be noted that some important changes are introduced into its fourth edition. See *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition [DSM-IV], Washington, DC, American Psychiatric Association, 1994, pp. 493-538.

⁶¹ In DSM-IV, this group of sexual disorders are under the general diagnostic title: "Sexual and Gender Identity Disorders."

⁶² DSM-III-R, p. 284; DSM-IV, pp. 527-528.

with pedophilia involving a preference for the same sex is roughly twice that of those who prefer the opposite sex.”⁶³

(c) *Predisposing factors*: Many people with this disorder were themselves victims of sexual abuse in childhood.⁶⁴ In this case, the respondent states “to have been sexually abused ... between the age of 10 and 12. The abuser used to bring him and other boys to his desk in the classroom and he would feel their genitals.”⁶⁵

Whatever might have been the nature of such an abuse, the structural factors and the habit protracted well over ten years, certainly intensified the impulses which, even if they did not destroy his freedom, they certainly diminished it.⁶⁶

4.3 – Application of the principles

First it is important to prove that the alleged crime was in fact committed by the respondent and that it was imputable to him.

(a) *Admission of the crime*. The respondent confessed before the judge that he had violated c. 1395, §2: the crime against the 6th commandment of the decalogue “with a minor under the age of sixteen years.”⁶⁷ There is no doubt that the respondent had confessed his sexual crimes with minors.

(b) *Recidivism*. Such an abnormal behaviour was constant: All warnings, admonitions, threats of sanctions were in vain. Also spiritual and psychological treatments proved futile.⁶⁸

(c) *The penalty to be imposed in view of the serious psychological infirmity*. Unlike the local court, the *rotal turnus coram Colagiovanni*

⁶³ *DSM-III-R*, p. 285; *DSM-IV*, p. 528.

⁶⁴ *DSM-III-R*, p. 285. This information has not been reproduced in *DSM-IV*.

⁶⁵ C. Colagiovanni, 14 June 1994, pp. 93-94.

⁶⁶ *Ibid.*, p. 94: “Quidquid sit de tali abusu, certo certius factores structurales et habitus per ultra decennium protractus, auxerunt illas pulsiones quae, si libertatem minime abstulerunt, certo imminuerunt.”

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

felt that, in view of the complex *subjective circumstances* of the accused, the penalty of reduction to lay state, a very serious and perpetual penalty, was not to be imposed at this stage of his life. The *turnus* acknowledged that as per c. 1395, §2, the priest must be punished with a just, serious and long penalty, which, together with prayer, meditation and divine grace, might heal his wounded personality, so that he might be able to regain full freedom, human and priestly dignity with the hope that he would not commit again the same crimes. Should he do so the maximum penalty provided in c. 1395, §2, that is dismissal from the clerical state, must be imposed.⁶⁹

The *turnus* also noted that there is a possibility for the respondent to seek from the Supreme Pontiff the favour of dispensation from the law of celibacy, which carries with it the reduction to lay state. This is particularly advisable in view of the deviant sexual impulses rooted in his personality long before his ordination to priesthood, and it became manifest both before and after his priestly ordination, namely during his diaconate and immediately thereafter.

The decision of the rotal court was as follows: There was proof of the crime mentioned in c. 1395, §2. As far as the penalty was concerned, the court's decision was *iuxta modum*, that is to say:

(i) The priest was barred from all ministry for ten years. However, he would be allowed to celebrate Mass during this time in the monastery mentioned in ii);

(ii) The priest must spend the ten years mentioned above in a monastery under the supervision of its Superior;

(iii) The ordinary was charged with the task of executing this sentence.⁷⁰

Concluding Reflections

The supreme value which ecclesial law intends to promote is the "salvation of souls" (*salus animarum*). Hence every legal decision made by ecclesiastical authorities must reflect this divine mission of the

⁶⁹ Ibid., pp. 94-95.

⁷⁰ Ibid., p. 95.

Church. In the proclamation of this supreme value, the law also has built-in safeguards for the exercise of one's rights and for the fulfilment of one's obligations. This way the good of each individual as well as the common good of all Christ's faithful would be peacefully realized within the context of ecclesial communion. Unless both these aspects of the supreme goal of ecclesial law are properly understood and appreciated, the decisions ecclesiastical authorities make are likely do more harm than good both to individual members and to the Church. The cases we have discussed above attest to some of the problems that arise when bishops tend to implement the laws of the Church in an inappropriate or illegitimate manner.

Whether a bishop intends to transfer or remove a parish priest or to suspend or dismiss a cleric, he must first and foremost keep in mind that the law is at his service and at the service of the persons he is going to deal with. When the bishop thinks that he is the law and acts in total disregard for the rights of Christ's faithful, he not only puts at risk the good of persons who are the victims of his decisions but also does irreparable harm to the good of the Church as a whole. A bishop, or any ecclesiastical authority for that matter, should keep in mind that in the law lies his protection. A decision made in accord with the letter and spirit of the law will always be regarded as just and equitable. This necessarily implies that in making decisions the authority concerned knows well the law(s) to be applied and has taken into consideration while applying it all the extenuating circumstances of the person involved. Equity means just application of the law to a concrete case with mercy and compassion. The spirit of ecclesial law necessarily demands such an application. This is most appropos when decisions involve imposition or declaration of penalties. In these situations utmost respect is due to the dignity and fundamental rights of persons. A decision that is made in view of the salvation of souls and with deep respect for the dignity and well-being of the concrete person will always be *just and equitable*. □