



## CONGREGATIO PRO CLERICO

Vatican City, 18<sup>th</sup> April 2009

Prot. N. 2009 0556

### *To The Eminent and Most Excellent Ordinaries At Their Sees*

Your Eminence, Your Excellency,

On the 30<sup>th</sup> January last, the Supreme Pontiff granted certain special faculties to this Congregation. The purpose of this Circular Letter is to present these faculties to all Ordinaries so that the reasoning behind them and the ends which they seek to accomplish are clearly understood in the manner in which they were originally intended.

The Congregation was moved to write this letter to the Most Rev. Ordinaries by virtue of its ardent desire to honour the mission and person of those priests who, faithful to their authentic priestly identity and mission, think, act and live in a counter-cultural manner in this heavily secularized moment in history, as well as to assist the Successors of the Apostles in their daily task of preserving and promoting ecclesiastical discipline for the benefit of the entire body of believers.

1. The ministerial priesthood has its roots in the apostolic succession and is imbued with sacred power<sup>1</sup>, which consists of the faculty and the responsibility of **acting in the person of Christ, Head and Shepherd**<sup>2</sup>. "The missionary dimension of the priest is born from his sacramental configuration to Christ the Head: this carries with itself, as a consequence, a happy and total adhesion to that

<sup>1</sup> Cf. VATICAN COUNCIL II, Dogmatic Constitution. *Lumen Gentium*, nn. 10, 18, 27, 28; decr. *Presbyterorum Ordinis*, nn. 2, 6; CATECHISM OF THE CATHOLIC CHURCH, nn. 1538, 1576.

<sup>2</sup> Cfr. John Paul II, Post Synodal Apostolic Exhortation. *Pastores Dabo Vobis* (25<sup>th</sup> March 1992) n. 15; *AAS* 84 (1992), pp. 679-681; *Catechism of the Catholic Church*, 875; CONGREGATION FOR THE CLERGY, PONTIFICAL COUNCIL FOR THE LAITY, CONGREGATION FOR THE DOCTRINE OF THE FAITH, CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, CONGREGATION FOR BISHOPS, CONGREGATION FOR THE EVANGELISATION OF PEOPLES, CONGREGATION FOR THE INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS, Instruction on certain questions regarding the collaboration of the non-ordained faithful in the sacred ministry of Priest, *Ecclesiae de Mysterio*, (15 August 1997): *AAS* 89 (1997), pp. 860ff.

which the tradition of the Church has called the *apostolica vivendi forma*. This consists in participating in a spiritually intense “new life”, in that “new style of life” which has been inaugurated by the Lord Jesus and has been lived by the Apostles themselves...Certainly, a great ecclesial tradition has distinguished the sacramental efficacy from the concrete existential situation of the individual priest, in this way sufficiently safeguarding the legitimate expectations of the faithful. However, this right doctrinal precision takes nothing away from the necessary, indeed the indispensable tension leading towards moral perfection, which must find a place in every authentically priestly heart<sup>3</sup>. Therefore, priests are called to continue the presence of Christ, the one high priest, embodying His way of life and making Him visible in the midst of the flock entrusted to their care<sup>4</sup>: this is the true source of strength for every pastoral vocation, which is constituted by the lived coherent testimony of one’s consecration, nourished by prayer and penitence.

2. All this is particularly important in understanding the theological reasoning behind priestly **celibacy**, since the will of the Church concerning it finds its expression, ultimately, in that particularly appropriate link which exists between celibacy and priestly Ordination whereby the priest is configured to Jesus Christ, Head and Spouse of the Church. The Church, being the Spouse of Jesus Christ, wishes to be loved in the total and exclusive manner with which Jesus Christ loved her, as her Head and Spouse. Priestly celibacy is, therefore, the gift of oneself in and with Christ to His Church, and expresses the service of the priest to the Church in and with the Lord<sup>5</sup>. Indeed, for this reason the Church has reaffirmed at the Second Vatican Council and repeatedly in the subsequent Pontifical Magisterium the “firm will to maintain the law that demands perpetual and freely chosen celibacy for present and future candidates for priestly ordination in the Latin rite”<sup>6</sup>. Priestly celibacy, as indeed apostolic celibacy more generally, is a gift that the Church has received and wishes to protect, convinced as she is that this is a good for herself and for the world<sup>7</sup>. To this end can.277, C.I.C. states: “§1. Clerics are obliged to observe perfect and perpetual continence for the sake of the kingdom of heaven and therefore are bound to celibacy which is a special gift of God by which sacred ministers can adhere more easily to Christ with an undivided heart and are able to dedicate themselves more freely to the service of God and humanity. §2. Clerics are to behave with due prudence towards persons whose company can endanger their obligation to observe continence or give rise to scandal among the faithful. §3. The diocesan bishop is

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<sup>3</sup> POPE BENEDICT XVI, Allocution to the participants in the General Assembly of the Congregation for the Clergy (16 March 2009).

<sup>4</sup> Cf. JOHN PAUL II, Post Synodal Apostolic Exhortation, *Pastores Dabo Vobis* (25<sup>th</sup> March 1992), n. 15, l.c. pp. 679 – 681.

<sup>5</sup> JOHN PAUL II, Post Synodal Apostolic Exhortation *Pastores Dabo Vobis* (25<sup>th</sup> March 1992), n. 29, l.c., p. 704.

<sup>6</sup> *Ibid.*; Cfr. VATICAN COUNCIL II, Decree *Presbyterorum Ordinis*, n. 16; PAUL VI, Encyclical Letter *Sacerdotalis Coelibatus* (24<sup>th</sup> June 1967), n. 14: AAS 59 (1967), p. 662; C.I.C., can. 277, §1.

<sup>7</sup> Cf. CONGREGATION FOR THE CLERGY, Directory for the Ministry and Life of Priests, *Tota Ecclesia*, (31 January 1994), pp. 57-60.

competent to establish more specific norms concerning this matter and to pass judgment in particular cases concerning the observance of this obligation”.

3. The Bishop has, among other things, the duty to remind priests of their obligation to perfect and perpetual continence for the sake of the Kingdom of Heaven, an obligation freely and willingly assumed by them at the moment of their ordination. Moreover, **the Bishop must always be attentive that the priest is faithful in carrying out his proper ministerial duties** (Cf. can. 384, 392). In fact “Bishops, as vicars and ambassadors of Christ, govern the particular churches entrusted to them by their counsel, exhortations, example, and even by their authority and sacred power”<sup>8</sup>. There exists between them and their priests a *communio sacramentalis* by virtue of the ministerial and hierarchic priesthood, which is a participation in the one priesthood of Christ<sup>9</sup>.

Certainly the bond of subordination between priests and the Bishop concerns the area of the exercise of their proper ministry, which they must exercise in hierarchical communion with their own Bishop. The relationship which exists between the Bishop and his priests cannot, in its canonical aspects, be reduced either to the relationship of hierarchic subordination of public law in the juridical system or to a dependent relationship of an employer to an employee<sup>10</sup>. It is not uncommon to find in society those who, misunderstanding the sacramental relationship of the Bishop to priest, mistakenly perceive it as the same as that which exists between a director of a business and his workforce.

In this type of situation, “since he must protect the unity of the universal Church, a bishop is bound to promote the common discipline of the whole Church and therefore to urge the observance of all ecclesiastical laws” (can. 392, §1) and he must be vigilant lest abuses insinuate themselves into ecclesiastical discipline (cf. can. 392, §2 CIC).

In fact the diocesan Bishop must accompany priests with particular concern, ensuring that their rights are protected (Cf. can. 384). The vast majority of priests live out their priestly identity daily with serenity and exercise faithfully their proper ministry; but, “when situations of scandal arise, especially on the part of the Church’s ministers, the Bishop must act firmly and decisively, justly and serenely. In these lamentable cases, the Bishop is required to act promptly, according to the established canonical norms, for the spiritual good of the persons involved, for the reparation of scandal, and for the protection and assistance of the victims”<sup>11</sup>. In this context even the penalty ultimately provided

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<sup>8</sup> VATICAN COUNCIL II, Dogmatic Constitution *Lumen Gentium*, n. 27.

<sup>9</sup> Cf. VATICAN COUNCIL II, Decree *Presbyterorum Ordinis*, n. 7; JOHN PAUL II, Post Synodal Apostolic Exhortation *Pastores Gregis* (16<sup>th</sup> October 2003), n. 47 : *AAS* 96 (2004), pp. 887-888.

<sup>10</sup> Cf. PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Explanatory Note: *Elements to establish the area of canonical responsibility of the diocesan Bishop towards clerics incardinated within the diocese and who exercise their ministry within it* (12<sup>th</sup> February 2004): *Communicationes*, 36 (2004), pp. 33-38. Cf. also CONGREGATION FOR THE CLERGY, Declaration: *Quidam Episcopi* (8<sup>th</sup> March 1982): *AAS* 74 (1982), pp. 642-645.

<sup>11</sup> CONGREGATION FOR BISHOPS, Directory for the Pastoral Ministry of Bishops: *Apostolorum Successores*, (22<sup>nd</sup> February 2004), n. 44.

for by the Bishop, “is seen as an instrument of communion that is as a means to restore what is lacking in the individual and in the common good, when members of the People of God act in an anti-ecclesial manner which is criminal and scandalous”<sup>12</sup>.

One must make clear, however, that the diocesan priest, who is not merely the passive executor of commands received from the Bishop, enjoys autonomy in making decisions both in his ministry and in his personal and private life. Thus he is personally responsible for his personal actions and for those carried out in the scope of his ministry. As a consequence, a Bishop cannot be held juridically responsible for the acts which a diocesan priest carries out in transgression of the canonical norms, universal or particular. This principle is not new and has always been part of the patrimony of the Church, means, among other things, that the criminal action of a priest, and its penal consequences as well as any eventual payment of damages, is imputable to the priest who has committed the offence, and not to the Bishop or to the Diocese, of which the Bishop is the legal representative (Cf. can. 393)<sup>13</sup>.

**4. It is reaffirmed that in exercising his judicial function, the Bishop should keep in mind the following general criteria:**

«(a) Without prejudicing the exercise of justice, the Bishop should encourage the faithful to *resolve* their differences *peacefully* and seek to be reconciled at the earliest opportunity, even after the canonical process has begun, thereby avoiding the prolonged animosity to which judicial processes often give rise (Cf. can. 1446 CIC).

(b) The Bishop should observe and require others to observe the *procedural norms* established for the exercise of judicial power, since he recognizes that these rules are no mere formality, still less an obstacle to be circumvented, but are a necessary means for establishing the facts and for administering justice (Cf. cann. 135, §3 and 391 CIC).

(c) If he receives notice of behaviour which gravely damages the common good of the Church, the Bishop should investigate with discretion, either by himself or through a delegate, the facts and the imputability of the accused (Cf. can. 1717 CIC). When he judges that he has assembled sufficient proof of the facts which gave rise to the scandal, he should proceed formally to *correct or admonish* the accused (Cf. cann 1339-1340 CIC). Yet when this does not suffice to repair the scandal, restore justice and bring about the rehabilitation of the person, the Bishop should proceed with the imposition of penalties, which may be applied in either of two ways (cfr. cann. 1341 and 1718 CIC)

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<sup>12</sup> JOHN PAUL II, Allocation to the Roman Rota (17<sup>th</sup> February 1979): *Insegnamenti di Giovanni Paolo II*, (1979/2) p. 412.

<sup>13</sup> PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Explanatory Note: *Elements to establish the area of canonical responsibility of the diocesan Bishop towards clerics incardinated within the diocese and who exercise their ministry within it* (12<sup>th</sup> February 2004), in *Communicationes*, 36 (2004) pp. 33-38.

- by means of a regular *penal process* in a case for which canon law requires it, given the gravity of the penalty, or when the Bishop judges it more prudent (Cf. can. 1721 CIC);
- by means of an *extra-judicial decree*, in conformity with the procedure established in canon law (Cf. can. 1720 CIC)»<sup>14</sup>.

5. However, one must acknowledge that situations of grave lack of discipline on the part of some clergy have occurred in which the attempts to resolve the problems by the pastoral and canonical means, foreseen in the Code of Canon Law, are shown to be insufficient or unsuitable to repair scandal, to restore justice or to reform the offender (Cf. can. 1341 CIC).

This Dicastery, with the intention of promoting the *salus animarum*, the supreme law of the Church, and responding to the exigencies often sadly experienced by not a few Bishops in their day to day governance, decided that it was opportune to place the aforementioned **special faculties** before the Sovereign Pontiff for his consideration and on the 30<sup>th</sup> January last, the Supreme Pontiff conceded to this Congregation:

- I** The Special Faculty to treat and present to the Holy Father, for His approval in *forma specifica* and His decision, cases of dismissal from the clerical state *in poenam* with dispensation from the obligations consequent to ordination, including that of celibacy, of clerics who have attempted marriage, even if only civilly, and who, having been admonished, have not withdrawn from this state, therefore persisting in an irregular and scandalous life (Cf. can. 1394, §1); and of clerics guilty of grave sins against the 6<sup>th</sup> Commandment (Cf. can. 1395, §§1-2);
- II** The Special Faculty to intervene in accord with c. 1399 CIC, either by taking direct action in a case or by confirming the decisions of Ordinaries, were the competent Ordinary so to request, due to the special gravity of the violation of law and the need or urgency to avoid an objective scandal.  
This is granted along with the derogation from the prescriptions of canons 1317, 1319, 1342, §2 and 1349 CIC, with respect to the application of perpetual penalties, to be applied to deacons only for grave reasons and to priests for the gravest reasons, always requiring that such cases are presented to the Holy Father for His approval *in forma specifica* and for His decision, and,
- III** The Special Faculty to handle cases of clerics, who having freely abandoned the ministry for a period of more than five consecutive years and who, after careful verification of the facts, insofar as this is possible, persist in such freely chosen and illicit absence from the ministry, taking this situation into account, to declare then their

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<sup>14</sup> CONGREGATION FOR BISHOPS, Directory for the Pastoral Ministry of Bishops: *Apostolorum Successores*, (22<sup>nd</sup> February 2004), p. 68.

dismissal from the clerical state, with dispensation from the obligations consequent to ordination, including that of celibacy.

Once the necessary conditions are present, if a Prelate deems it appropriate to avail himself of the foregoing faculties, he should be aware of the following information and procedures.

6. This Congregation has studied the cases of clerics, priests and deacons, who:

- attempt marriage, even civilly and, having been warned, have not withdrawn from this state, but instead have persevered in their irregular and scandalous conduct (Cf. can. 1394 §1);
- live in concubinage and commit other grave delicts against the sixth commandment of the Decalogue (cf. can. 1395 §1-2) and who do not demonstrate any sign of mending their ways, despite repeated warnings, nor show any intention to request the dispensation from the obligations arising from Sacred Ordination.

Often in such cases, the penalty of "suspension" and of irregularity, in the sense of can. 1044 §1, 3<sup>o</sup><sup>15</sup>, have not been demonstrated to be sufficiently effective or suitable to repair the scandal caused, to restore justice, and to reform the offender (Cf. can. 1341). In fact, only through dismissal from the clerical state, according to the norm of can. 292 CIC, would the cleric also lose the rights pertaining thereto and would no longer be bound by any obligations of that state.

Hence, His Holiness has deigned to concede to the Congregation for the Clergy the special faculties to:

*to handle and present to the Holy Father, for His approval in forma specifica and decision, cases of dismissal from the clerical state in poenam with the consequent dispensation from the obligations consequent to ordination, including that of celibacy, of clerics who have attempted marriage, even if only civilly, and who, having been admonished, have not withdrawn from this state, therefore persisting in an irregular and scandalous life (Cf. can. 1394, §1); and of clerics guilty of grave sins against the 6<sup>th</sup> Commandment (Cf. can. 1395, §§1-2).*

Such cases must be instructed by means of a legitimate administrative process, always ensuring the right of defence.

With regard to the administrative procedure (Cf. cann. 35-58, 1342, 1720 CIC), such cases are to be instructed only by clerics, and it must be ensured that:

- 1° the accused is notified of the accusations alleged against him and of the relevant proofs, giving him the opportunity to produce a defence, unless, having been legitimately cited, he has neglected to make himself available;

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<sup>15</sup> Cf. also PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Declaration: *Concerning the celebration of sacraments or sacramentals by priests who have attempted marriage* (19<sup>th</sup> May 1997): *Communicationes* 29 (1997), pp. 17-18.

- 2° a careful examination is carried out, with the help of two assessors (Cf. cann. 1424 CIC) of all the proofs and the elements that have been gathered, as well as of the defence presented by the accused;
- 3° a Decree is issued, according to the provisions of canons 1344 – 1350 CIC, if there be no doubts about the delict having been committed and the criminal action has not become extinct according to the provisions of can. 1362. The Decree, issued according to the norm of canons 35 – 38, must contain the reasons motivating it, and have expounded therein, even if only in summary fashion, the reasons in law and in fact pertaining to the particular situation.

7. Moreover, it must always be shown that a situation exists in which discipline has been gravely breached by the cleric, and every attempt to resolve the problem through the pastoral and canonical measures already provided in the Code of Canon Law have not brought about a positive result, and no end is foreseen to this situation, thus causing grave scandal to the faithful and damaging the common good of the Church and Her spiritual mission.

In such circumstances, Ordinaries have often requested direct action from the Apostolic See, or have asked that their decisions be confirmed, in order to deal with these matters with greater efficacy and authority, sometimes even seeking the imposition of perpetual sanctions, not excluding dismissal from the clerical state, should the particular circumstances of a case require it.

*Therefore His Holiness has deigned to concede to the Congregation for the Clergy the Special Faculty to intervene in accord with can. 1399 CIC, either by taking direct action in a case or by confirming the decisions of Ordinaries, were the competent Ordinary were to so request, due to the special gravity of the violation of law and the need or urgency to avoid an objective scandal.*

*This is granted along with the derogation from the prescriptions of canons 1317, 1319, 1342, §2 and 1349 CIC, with respect to the application of perpetual penalties, to be applied to deacons only for grave reasons and to priests for the gravest reasons, always requiring that such cases are presented to the Holy Father for His approval in forma specifica and His decision.*

This provides the special faculty of intervening according to the sense of can. 1399 CIC, either by the Dicastery acting directly itself or by confirming the decisions of Ordinaries, whenever the competent Ordinary should request this, in order to apply a just penalty or penance for an external violation of divine or canon law. In truly exceptional and urgent cases, when the offender has no intention to amend his ways, sometimes even perpetual penalties may be imposed.

Such cases must be instructed by means of a legitimate administrative process, always ensuring the right of defence.

8. This Congregation has experience of cases of priests and deacons who have abandoned ministry for a prolonged and continuous time. In these cases,

after verifying the circumstances insofar as possible, the persistence of such an illicit and voluntary absence from ministry is ascertained, it was decided that the intervention of the Holy See would guarantee order in the ecclesiastical society and would preserve the faithful from falling into *error communis* (cf. c. 144) regarding the validity of the Sacraments.

Therefore His Holiness has deigned to concede to the Congregation for the Clergy the special faculty to:

*handle the cases of clerics, who have abandoned the ministry by personal choice for a period of more than five consecutive years, and after careful verification of the facts insofar as this is possible, persist in such voluntary and illicit absence, the Dicastery, taking this objective situation into account, may declare the dismissal from the clerical state, with dispensation from the obligations consequent to ordination, including that of celibacy, for the cleric involved.*

Such cases, even those pre-existing the granting of this faculty, must be instructed according to the following procedure:

- Art. 1* The Ordinary of Incardination may request a Rescript of the Apostolic See by which dismissal from the clerical state is declared, along with the related dispensations from the obligations consequent to ordination, including that of celibacy, for a cleric who has abandoned ministry for a period of longer than five consecutive years, and who after careful verification of the facts, insofar as possible, persists in the voluntary and illicit absence from ministry.
- Art. 2* §1 The competent Ordinary is that of the incardination of the cleric.  
 §2 The competent Ordinary can entrust the instruction of such procedures either in a stable manner, or on a cases by case basis, to a suitable priest from his own or another Diocese.  
 §3 In this procedure the Promoter of Justice, who has a duty to protect the public good, must always be involved.
- Art. 3* The declaration mentioned in Art. 1 can be obtained only after the competent Ordinary, having completed the relevant investigation, has reached moral certainty regarding the irreversible abandonment from ministry on the part of the cleric, from either the declaration of the cleric himself, and/or from the depositions of witnesses, from well founded public knowledge or other indications.
- Art. 4* The notification of any of the acts must be made through the postal service or by other secure means.
- Art. 5* The instructor, having completed the instruction, should transmit all of the acts to the competent Ordinary with his appropriate summary, expounding his *votum* according to the objective facts of the situation.
- Art. 6* The competent Ordinary should transmit to the Apostolic See all of the acts together with his own *votum* and the observations of the Promoter of Justice.



- Art. 7* If, in the judgement of the Apostolic See, supplementary instruction is required, that will be indicated to the competent Ordinary, with directions as to how to complete the "Acts."
- Art. 8:* The Rescript of dismissal from the clerical state, with the related dispensation from the obligations attendant upon Holy Orders, including that of celibacy, is transmitted from the Holy See to the competent Ordinary, who will provide for making it known in an appropriate fashion.

9. After the dismissal from the clerical state, in exceptional cases, a cleric who might wish to seek rehabilitation, must present that request to the Apostolic See through a benevolent Bishop.

The sincere desire of this Congregation is that each Ordinary may, in a truly paternal fashion and in a spirit of pastoral charity, undertake to ensure that his most valued collaborators know how to live ecclesiastical discipline as "discipleship", with profound interior motivations, remembering that the daily exertion of "doing" is of little value if there is not the "being in Christ" as an authentic disciple.

*Cláudio Card. Hummes*

Cláudio Cardinal Hummes  
*Prefect*

*+ Mauro Piacenza*

✠ Mauro Piacenza  
*Titular Archbishop of Vittoriana*  
*Secretary*

