
G. SPECIAL QUESTIONS

1. Statute of Limitations (cc. 1362, 1395)

Prospectively. With sexual delicts committed with a minor on or after April 25, 1994, the promoter of justice may not bring an action for dismissal from the clerical state on the basis of canon 1395, §2 if the following periods have expired:

- a. The minor in question has completed his or her twenty-eighth year of age.
- b. At least one year has passed from the denunciation of the delict, provided that the denunciation was made before the minor completed his or her twenty-eighth year of age.

If both conditions have occurred prior to the citation of the accused, the action is time-barred. Effectively speaking, this statute of limitations represents a variable period dependent on the age of the minor at the time of the delict. If the minor were ten years old at the time of the most recent act, the cleric would be subject to the penalty for eighteen years (plus an extension of no more than one year if the denunciation did not occur until the minor in question was twenty-seven years of age). On the other hand, if the minor were seventeen years old at the time of the most recent act, the statute of limitations would expire in eleven years (plus any applicable extension if denunciation were made during the last year of the period).

This new statute of limitations is applicable to all delicts committed from April 25, 1994, until April 24, 1999, unless the Holy See modifies the experimental nature of the derogation by shortening or extending it.

Retroactively. The above-described change in the statute of limitations is not retroactive. It applies only to offenses committed on or after April 25, 1994. Nonetheless, the Holy Father promulgated a transitory norm affecting some delicts committed prior to April 25, 1994. Such delicts with a minor (i.e., one under sixteen years of age) are deemed to be actionable by criminal process until the minor in question completes his or her twenty-third year of age.

Practically speaking, the transitory norm retroactively “tolls” or suspends the applicable five-year statute of limitations in effect at the time of the commission of the delict (no matter how old the minor was at the time) until the minor in question reaches the age of majority, at which time the five-year period begins to run. For example, if the minor were precisely

ten years old at the time of the most recent act, the transitory norm would consider the delict punishable for thirteen years, whereas, if the victim were precisely fifteen years of age at the time of the delict, the action would not be deemed to be extinguished for eight years.

This transitory norm supersedes the straight five-year statute of limitations of canon 1362, §1, 2° and, by its very purpose, seems to preclude the application of the preference for the more favorable penal law stated in canon 1313, §1.

2. Age of Minor (c. 1395)

A cleric, subject to prosecution in a diocesan tribunal located within the territory of the NCCB, commits the delict described in canon 1395, §2 if he commits an offense against the sixth commandment with a young man or young woman *below the age of eighteen*. This derogation of canon 1395, §2 took effect as to any act committed on or after April 25, 1994, and remains in effect until April 24, 1999, unless the Holy See modifies the experimental nature of the derogation. It is not retroactive in nature; prior to April 25, 1994, there was no violation of canon 1395, §2 unless the minor was less than sixteen years of age.

3. Imputability (c. 1321-1330)

- a. The traditional rules about the requisites for personal culpability (full use of reason and free consent of the will) must be addressed by the tribunal in deciding about the imputability of the alleged acts to the accused and the appropriateness of the penalty of dismissal or some lesser penalty. There is no “bright-line” or “black-and-white” rule. Each case is different and must be judged according to the law and the facts and circumstances demonstrated to the tribunal.
- b. The tribunal does not stand in the place of a confessor. Its task is not that of sacramental judgment which can rely wholeheartedly on the penitent’s statements in the internal forum. Its judgment must be based solely on the acts of the case and on the rules of law in determining the imputability needed for imposition of dismissal.
- c. Violations of canon 1395, as with all delicts, are committed solely by external acts. No one commits a delict nor can anyone be punished canonically for an interior act, a tendency to criminal behavior,

or a sin of thought or desire, no matter how serious (c. 1321). Thus, even when the cleric has committed similar delicts years before and retains a propensity to commit such acts again, such history and propensity, while they represent circumstances worthy of consideration in assessing the facts, are no basis for the imposition of the penalty of dismissal from the clerical state without proven external acts.

- d. Conversely, the external act alone does not suffice. It must be a human act, posited with sufficient internal deliberation and freedom to be gravely imputable insofar as it results from personal malice or culpability (c. 1321, §1). Thus, unless a specific law determines otherwise, one may not be punished canonically for an act of negligence since negligence is, by definition, non-deliberate (c. 1321, §2). Furthermore, when the accused has committed a delict with sufficiently grave imputability but is shown to have lacked full imputability, the diminution in imputability represents a basis for mitigation of the penalty (c. 1324, §1, 10°).
- e. Once an external violation has been proven, imputability is *presumed unless otherwise evident (nisi aliud appareat)* (c. 1321, §3). This is a *presumptio iuris*. It is, therefore, rebuttable, but only by admissible evidence, not simply by bare denial. Under the 1917 Code, the accused had to prove with moral certitude that the presumption of *dolus* was not verified in his case (*donec contrarium probetur* in c. 2200, §2). That level of proof is no longer required in order to rebut the presumption of imputability. But sufficient evidence must be introduced which makes it clear to the judges that the presumption lacks force and that a reasonable doubt exists concerning imputability in this particular case, a doubt which must be resolved for a morally certain finding of guilt. In this regard, the tribunal must be careful not to substitute statistics or hypothetical theories for evidence. It is the actual deliberation and freedom of the accused cleric himself that is at issue, and it is only sufficient evidence about the accused's own imputability that will rebut the presumption.

Some might think that there is an inherent impossibility in dismissing a pedophile from the clerical state since the proof of the accused's psychological illness, manifested by the external violations, is itself proof of his lack of full imputability. This kind of facile and simplistic statement is incorrect. It would render the proscription of canon 1395, §2 meaningless *in se*, relegating its application to some sort of

imaginary cleric who, though free of all psychological illness and disordered desire, chose, with impeccable deliberation and freedom, to abuse a young person sexually. Though assisted by the advice of experts in the field of psychiatry, the tribunal must not permit itself to become a spiritual or psychological counselor. It must remain always and only an interpreter of the law and a judge of proven facts.

- f. The following represent some of the rules and facts that a tribunal might take into account in deciding whether the penalty of dismissal may be imposed. We are assuming here that at least one external act of sexual abuse of a minor has been proven with moral certainty and that the only issue before the tribunal is whether the imputability of the accused and the circumstances warrant dismissal from the clerical state.
1. The presumption of canon 1321, §3 resolves the doubt in the external forum. Without evidence of facts which clearly show that the imputability of the accused was diminished, the tribunal must find in favor of full imputability.
 2. The years of seminary formation in theology and spirituality as well as the exercise of the ministry (particularly, the act of judging others in the confessional) support the presumption that the accused understood the immorality of what he was doing.
 3. The tribunal's judgments about sin, rationality, and freedom should be grounded in Christian anthropology. The fact that society has, in many ways, lost a sense of serious sin or personal culpability does not mitigate the individual cleric's guilt if he has adopted such a clearly un-Christian attitude.
 4. It is unlikely that an accused cleric who has sexually abused a minor is free of all psychological illness. The existence of such an illness and its effect on imputability, however, must appear from the evidence. Thus, if the accused has introduced expert testimony that he suffers from such an illness, the tribunal can admit such testimony and give it appropriate weight. Such an illness, however, should not be automatically equated with lack of personal responsibility for the external violations themselves. Despite the illness, the accused may have been fully aware of the nature and consequences of his actions and have possessed sufficient freedom, in a theological sense, to be charged with not

merely grave, but full, imputability as understood in the penal law. For example, when the accused has repeated evil acts over and over again without self-reform, this should not necessarily be deemed, in some sort of deterministic fashion, to lessen his imputability. In a way, the more a person identifies himself with his repetitious acts, the greater the imputability may be of those acts. In short, if the accused claims to have been subject to a compulsion, the judges must evaluate the meaning of compulsions, the exact nature of the one claimed, and the evidence of the degree of its influence on the accused in the commission of the delict.

5. Canons 1324-1326 serve as a guide for the tribunal in weighing all the mitigating and aggravating factors that may have an effect on imputability and the severity of the appropriate penalty. It should also be noted that particular law can determine other exempting, mitigating, or aggravating circumstances, and specific circumstances can be set down in a precept which will exempt, mitigate, or aggravate the penalty threatened in that precept (c. 1327).
6. Two mitigating factors that may occur are the lack of the use of reason caused by drunkenness or some other narcotic agent as well as the commission of an act in the heat of passion (c. 1324, §1, 2°-3°). Of course, if one is aware that drunkenness or narcotic use often leads to such acts and decides to drink or ingest such narcotics anyway, the resulting loss of the use of reason does not diminish full imputability (c. 1325). Similarly, when passion is freely stimulated or fostered by the accused, it cannot be taken into account as a mitigation of imputability (c. 1325).
7. Even if full imputability is shown to have been lessened in the particular case or there are other mitigating circumstances, the tribunal must also take account of aggravating circumstances as described in canon 1326. It may be that the cleric used his position in the Church or his authority or his office to commit the offense (c. 1326, §1, 2°). If a cleric uses his familiarity with parishioners or other youth to create situations in which such acts are committed, or, as an authority figure, exercises undue influence over the victim, the acts become even more heinous and admit of more severe punishment, offsetting the mitigation

which might otherwise be applicable.

8. Another common aggravating circumstance may be recidivism. When the accused, because of his own history and self-awareness, foresees what is going to happen and takes none of the precautions to avoid such acts that a reasonably prudent person would take, the resulting acts may warrant a more severe penalty. In other words, prior acts which contribute to the occurrence of foreseeable intentional acts may counteract the mitigation which might result from a lessening of freedom through compulsion. One who is aware of a tendency toward a certain delict has the responsibility to take due precautions — e.g., the persons he associates with, his use of alcoholic beverages, the need for psychiatric therapy, the nature of the ministerial assignment he accepts. To omit such precautions can be grounds for infliction of a more severe penalty.
9. Finally, related to recidivism is the situation where a cleric is charged with several violations of canon 1395, §2. Multiple delicts may demonstrate an ingrained pattern of behavior that convinces the tribunal that the accused is incorrigible and represents a real threat to young persons in the future. A delict may also be aggravated by the fact that it violates more than one provision of the code. For example, the cleric in question may have sexually abused a minor with force or threats or in some public fashion, or may have also solicited the minor in the confessional. In such situations, the justification for dismissal from the clerical state may be extremely strong even though some psychopathology may have diminished the malice or culpability involved in the acts.
10. The accused's imputability is an essential element of any decision to dismiss a cleric from the clerical state. It cannot be looked upon simplistically nor can any legal rules alone settle the matter in some sort of mechanical fashion. The actual facts and circumstances of the accused cleric himself, his history, the context within which the proven acts took place, and especially the gravity of the acts must all be taken into account. The tribunal must balance both mitigating and aggravating circumstances to determine whether dismissal is in fact warranted or a lesser penalty suffices in light of the threefold goal of reparation of harm, restoration of justice, and reformation of the cleric.

A judicial determination of guilt is difficult enough, but, upon reaching moral certitude, the truth should impose itself on the consciences of the judges. Determining whether the penalty of dismissal from the clerical state is an appropriate punishment of such proven delicts is in one way easier since it calls for an exercise of prudential discretion by the judges, but, in another sense, it is much more difficult for precisely the same reason — it is a matter not merely of facts but of the delicate balancing that judicial prudence requires (cc. 1343-1346).

H. CONCLUSION

When a cleric has sexually abused a minor, he may very well undertake a course of therapy and be successfully reintegrated into ministry or, alternatively, recognize that he should no longer continue as a cleric. In the latter case, the cleric will voluntarily petition for a dispensation from the Apostolic See returning him to the lay state.

In other cases, a cleric may be falsely accused, or allegations may be exaggerated. The Church calls for a thoroughgoing investigation of such accusations to make certain of the facts before any penal process is invoked.

Sometimes, however, after due investigation, it may be apparent that a cleric has sexually abused a minor, or perhaps several minors, and represents a danger to children and harm to the entire church community. His diocesan bishop may conclude that the cleric should not remain a member of the clerical state. Yet, such a cleric may not be willing to petition for a dispensation from presbyteral celibacy and the other obligations of orders.

In this type of situation, it may be advisable to utilize the Church's penal process for the dismissal of the accused from the clerical state. The process is designed to protect the rights of the accused as well as the rights of victims and the Church itself. It is not likely that such a process will be frequently invoked. It should not be commenced unless the diocesan bishop is reasonably certain that the cleric is guilty of the charges and that dismissal from the clerical state is the only appropriate remedy.

Once the bishop is convinced of this pastoral situation, however, the prosecution should go forward competently, respectfully, speedily, and resolutely to make certain that the cleric is dismissed from the clerical state and will no longer be in a position to abuse the trust that the Church, through ordination, placed in him. The process should be followed carefully in order to serve the threefold purpose of the Church's penal law: to bring about the reform of the accused, to repair the harm that has been done to individual members of the Church and to the Church as a community, and to restore the torn mantle of justice for all concerned.

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