Protection of the Minors and A *Vademecum* of the CDF to apply for the Procedural Norms

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**Introduction**

Child sexual abuse (CSA) is a worldwide problem with serious life-long consequences. It occurs in any fields of life. We get the news of CSA cases happening in the families by the parents and relatives, in schools by the teachers and in religious institutes by their leaders. It is a widespread phenomenon in all cultures and societies and one of the most prevalent public health issues facing society today. Even the Catholic Church is no exception in this regard. CSA is a grave issue in the Catholic Church. Sexual abuse of the minors, especially by the clerics, is a shame and humiliation for the Church. Pope Francis criticized the clerics in a severe manner for their scandalous crime, because it is utterly incompatible with her moral authority and ethical credibility.1

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At the same time, it should be noted that the Church shows special concern for the protection of the minors and vulnerable adults. There are continuing efforts from the part of the recent popes to protect the children. They have taken very serious steps to impose appropriate penalties on the cleric who perpetrates such crimes. Pope John Paul II included the crime of sexual abuse of minors by clerics among the grave delicts reserved to the Congregation for the Doctrine of the Faith (CDF). He confirmed the Congregation’s exclusive competence in dealing with cases of clerical sexual abuses of minors. Pope Benedict XVI approved and ordered to promulgate the revised norms on the delicts reserved to the CDF. He wrote an essay on “The Church and the scandal of sexual abuse” in the *Klerusblatt*, a periodical for clergy in Bavarian dioceses. Pope Francis has stated that the Church loves all her children like a loving mother. He has issued a series of documents containing strict norms to prevent the sexual abuse of children by the clerics. The main thrust of this article is to study the procedure of the cases of CSA by the clerics based on *Vademecum* published by CDF on 16 July 2020. In connection with this subject matter, we will see briefly Jesus’ attitude towards the children and the continuing efforts of the Church to protect the minors as evident from the various documents issued by the Holy See.

**Jesus’ Approach towards the Children**

Our Lord Jesus Christ expressed a special love and appreciation for the children. He is gentle and kind with them, and passionate in protecting them from harm. In the gospel of Mark, we find an incredible account of Jesus’ encounter with children: “And they were bringing children to Him that He might touch them, and the disciples rebuked them. But when Jesus saw it, He was indignant and said to them, ‘Let the little children come to me; don’t hinder them, for to such belongs

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the kingdom of God. Truly I say to you, whoever does not receive the kingdom of God like a child shall not enter it.’ And He took them in His arms and blessed them” (Mark 10:13-16). Let the little children come to me, don’t hinder them is a strong statement of Jesus.

On another occasion, Jesus placed a child among the disciples to teach who is the greatest in the kingdom of heaven. Jesus said: “Truly I tell you, unless you change and become like little children, you will never enter the kingdom of heaven. Therefore, whoever takes the lowly position of this child is the greatest in the kingdom of heaven. And whoever welcomes one such child in my name welcomes me” (Matthew 18:1–5). We also see Jesus raises the daughter of Jairus a leader of synagogue from dead (Lk. 8:40-42, 49-56), heals a boy with an evil spirit (Mk. 9:14-29), and heals the little daughter of a gentile woman of Syro-Phoenician origin (Mk. 7:24-30). In his above mentioned article, Pope emeritus Benedict XVI wrote, “In light of the scale of pedophilic misconduct, a word of Jesus has again come to attention which says: “Whoever causes one of these little ones who believe in me to sin, it would be better for him if a great millstone were hung round his neck and he were thrown into the sea” (Mark 9:42). The phrase “the little ones” in the language of Jesus means the common believers who can be confounded in their faith by the intellectual arrogance of those who think they are clever. So here Jesus protects the deposit of the faith with an emphatic threat of punishment to those who do it harm”. Thus, in the gospels, we experience God’s tender heart for children. His readiness to dedicate time to them, his recognition of their societal status, and his zeal for protecting their innocence and rights is clear from the Gospels.

**Constant Efforts of the Church to Protect the Minors**

On 4 June 2016, Pope Francis, in his Apostolic Letter issued *motu proprio As a loving Mother*, stated: “The Church loves all her

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3 Ibid.
children like a loving mother, but cares for all and protects with a special affection those who are smallest and defenceless. This is the duty that Christ himself entrusted to the entire Christian community as a whole. Aware of this, the Church is especially vigilant in protecting children and vulnerable adults”. Pope Benedict XVI stated in his address to the bishops of Ireland on their ad limina visit on 28 October 2006 that the Church’s efforts to protect children must be a ‘continuous process’. Pope Benedict XVI said: “In the exercise of your pastoral ministry, you have had to respond in recent years to many heart-rending cases of sexual abuse of minors. These are all the more tragic when the abuser is a cleric. The wounds caused by such acts run deep, and it is an urgent task to rebuild confidence and trust where these have been damaged. In your continuing efforts to deal effectively with this problem, it is important to establish the truth of what happened in the past, to take whatever steps are necessary to prevent it from occurring again, to ensure that the principles of justice are fully respected and, above all, to bring healing to the victims and to all those affected by these egregious crimes”.5

The documents and norms issued by the Apostolic See for the protection of the minors

The continuing efforts of the Church in protecting the minors and punishing the clerics who commit sexual abuse of the minors are evident from the various documents from Holy See. From the time of Pope John Paul II, more precise and stern actions were taken to impose penalties on the committers of such crimes. We treat them briefly as follows:

1. During the pontificate of Benedict XIV, serious measures were taken by his Apostolic Constitution Sacramentum Poenitentiae,

promulgated on 1 June 1741. Since this document dealt with the crime connected with the sacrament of penance, the special procedure was based on an indirect method of achieving the moral certitude required for the definitive decision in the case.

2. Pope Benedict XV promulgated Codex Iuris Canonici on 27 May 1917. He included strict norm concerning the child sexual abuse in canon 2359§2. This canon stated that if the clerics in sacred orders engaged in a delict against the sixth precept of the Decalogue with a minor below the age of sixteen, or engage in adultery, debauchery, bestiality, sodomy, pandering, incest with blood-relatives or affines in the first degree, they are suspended, declared infamous, and are deprived of and in more serious cases, they are to be deposed.

3. The Congregation of the Holy Office (the present Congregation for the Doctrine of the Faith) issued in 1922 an Instruction, Crimen Sollicitationis. It gave detailed instruction to dioceses and tribunals on the procedures to be adopted when dealing with the grave canonical crime of solicitation. This crime was connected with the abuse of the sanctity and dignity of the sacrament of penance by a Catholic priest who solicited the penitent to sin against the sixth commandment. In 1962 Pope John XXIII authorized to reprint the Instruction Crimen Sollicitationis of 1922 adding a section for administrative procedures to be used in those cases in which religious clerics were involved. The re-printed copies of the instruction were meant to distribute among the bishops gathered in Second Vatican Council (1962-1965).

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6 Benedict XIV, Apostolic Constitution, Sacramentum Poenitentiae, 1 June 1741, see, Congregation for the Doctrine of the Faith, Norms on the Delicts Reserved to the Congregation For the Doctrine of the Faith, Vatican City, 2012, p. 49.
7 Ibid, p. 50.
8 Ibid.
4. Pope Paul VI promulgated the Apostolic Constitution *Regimini Ecclesiae Universae* (REU) on Roman Curia on 15 August 1967. All questions which touch upon the doctrine of the faith and morals pertain to the CDF (REU art. 31). Pope confirmed the judicial and administrative competence of the Congregation in proceeding according to its approved norms.

5. By promulgating the Apostolic Constitution *Pastor Bonus* (PB) on 28 June 1988, Pope John Paul II defined the competence of the CDF in matters concerning faith and morals. The CDF can examine offences against the faith and more serious one both in behaviour or in the celebration of the sacraments which have been reported to it and, if need be, proceed to the declaration or imposition of canonical sanctions in accordance with the norms of common or proper law (PB art. 52).

6. John Paul II also made very severe law to punish the clerics who commit the crime of sexual abuse of the minors in *Codex Iuris Canonici* which he promulgated on 25 January 1983. Canon 1395§2 stipulates that a cleric who has offended against the sixth commandment of the Decalogue with a minor under the age of sixteen is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants. There is no explicit reference to sexual abuse of the minors by the clerics in CCEO.

7. Pope John Paul II published on 30 April 2001 the apostolic letter issued *motu proprio Sacramentorum Sanctitatis Tutela* (SST) by which are promulgated the norms on more grave delicts reserved to the Congregation for the Doctrine of the Faith. A

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delict against morals, namely, the delict committed by a cleric against the Sixth Commandment of the Decalogue with a minor below the age of 18 years was placed under the exclusive competence of this Congregation. Pope granted CDF special faculties providing greater flexibility to conduct the investigation and penal process.

8. Nine years after the promulgation of the *Motu Proprio Sacramentorum Sanctitatis Tutela* the CDF proposed certain changes to these norms. The CDF did not intend to modify the entire text but to improve the application of the law. The result of an attentive and concentrated study was presented to Pope Benedict XVI, which he approved and ordered to promulgate the revised text on 21 May 2010 under the same title *Motu Proprio Sacramentorum Sanctitatis Tutela* which deals with the Norms on the Delicts Reserved to the Congregation for the Doctrine of the Faith or Norms on the Delicts Against the Faith and the More Grave Delicts.\(^\text{12}\)

9. Pope Francis took a major step in the continuing process of preventing abuse of the minor. On 22 March 2014, the Pope established a Pontifical Commission for the Protection of Minors.\(^\text{13}\) On 21 April 2015 Secretariat of State issued its Statutes, which defines the purpose of the Commission, membership, government and manner of acting.\(^\text{14}\) The Commission is an advisory body at the service of the Holy Father (Art.1). The purpose of the Commission is to propose initiatives to the Roman Pontiff, according to the procedures and determinations specified in these *Statutes*, for the purposes of


promoting local responsibility in the particular Churches for the protection of all minors and vulnerable adults (Art. 2). However, this commission has no competence in the canonical processing of individual accusations of abuse.\textsuperscript{15}

10. In his \textit{motu proprio} \textit{As A Loving Mother}, promulgated on 4 June 2016, Pope Francis said that, ”Aware of this, the Church is especially vigilant in protecting children and vulnerable adults. This duty of care and protection devolves upon the whole Church, yet it is especially through her Pastors that it must be exercised. Therefore diocesan Bishops, Eparchs and those who have the responsibility for a Particular Church must pay vigilant attention to protecting the weakest of those entrusted to her care”.\textsuperscript{16} In this \textit{motu proprio}, Pope Francis introduced very serious measures to take action not only for the perpetrator of the crime but also for the negligence of a bishop in the exercise of his office, and in particular in relation to cases of sexual abuse inflicted on minors and vulnerable adults. Eparchial Bishops, Exarchs or Major Superiors can be legitimately removed from their office if they have through negligence committed or through omission facilitated sexual abuse by clerics that have caused grave harm to the minors or vulnerable adults.

11. Pope Francis convoked a meeting of the presidents of the world’s bishops’ conferences and the representatives of the major superiors to discuss the crisis experienced throughout the world after shocking revelations of clerical abuse perpetrated against minors. The meeting took place from 21 to 24 February 2019 in

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Vatican. On the final day of the meeting, Pope Francis spoke about the seriousness of child sexual abuse in the Church. He stated, “The brutality of this worldwide phenomenon becomes all the more grave and scandalous in the Church, for it is utterly incompatible with her moral authority and ethical credibility. Consecrated persons, chosen by God to guide souls to salvation, let themselves be dominated by their human frailty or sickness and thus become tools of Satan”.

12. On 26 March 2019 Pope Francis promulgated the Apostolic Letter issued *motu proprio* The Protection of Minors and Vulnerable Persons. In this *motu proprio* he asserted that “the protection of minors and vulnerable persons is an integral part of the Gospel message that the Church and all its members are called to proclaim throughout the world. Christ himself, in fact, has entrusted us with the care and protection of the weakest and defenceless: “whoever receives one child such as this in my name receives me” (Mt 18:5)”. Pope wanted by this document to strengthen even more the institutional and regulatory framework to prevent and to counter abuses against minors and vulnerable persons in the Roman Curia and in Vatican City State.

13. On 26 March 2019, Pope published the Law No. CCXCVII which requires Vatican City officials, including those in the Roman Curia and diplomatic personnel of the Holy See, such as the Apostolic-Nuncios, to report sex abuse. The law also extends the statute of limitations to 20-year prescription that, in the case of and offence against a minor, begin to count from on

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20 http://www.vatican.va/resources/resources_protezioneminori-legge297_20190326_en.html
his or her eighteenth birthday. In addition, the Governorate of the Vatican City State is required to set up, within the Vatican Department of Health and Welfare, service to support and assist the victims of abuse, providing them with medical and psychological assistance and informing them of their rights and of how to enforce them.

14. Pope issued guidelines for the protection of children and vulnerable persons in the Vicariate of Vatican City on 26 March 2019.\textsuperscript{21} The policies and procedures contained in these guidelines are aimed at establishing and maintaining an ecclesial community that is respectful and mindful of the rights and the needs of minors and vulnerable persons, as well as at being vigilant to the risks of exploitation, sexual abuse and ill-treatment in the context of the activities carried out within the sphere of the Vicariate of Vatican City.

15. Pope Francis issued the \textit{motu proprio} \textit{Vos Estis Lux Mundi} (VELM) on 7 May 2019 requiring both clerics and religious brothers and sisters, including Bishops, throughout the world to report sex abuse cases and sex abuse cover-ups by their superiors. Under the new \textit{motu proprio}, all Catholic dioceses throughout the world are required to establish stable mechanisms or systems through which people may submit reports of abuse or its cover-up by June 2020. All metropolitan Archdioceses are also required to send reports to the Holy See on the progress of the investigation, whether in their Archdiocese or suffragan dioceses, every 30 days and to complete the investigation within 90 days unless granted an extension. The law is effective for a 3-year experimental period with a \textit{vacatio legis} of 1 June 2019.\textsuperscript{22}

\textsuperscript{21} \url{http://www.vatican.va/resources/resources_protezioneminori-lineeguida_20190326_en.html}

\textsuperscript{22} \url{http://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html}
16. *Rescriptum ex Audientia SS.MI* of 3 December 2019 made certain amendments to the “*Normae de gravioribus delictis*” reserved to the judgement of the Congregation for the Doctrine of the Faith in accordance with the *Motu proprio* of Saint John Paul II “*Sacramentorum Sanctitatis Tutela*” (30 April 2001), as amended by the *Rescriptum ex Audientia SS.mi* dated 21 May 2010.23

17. *Rescriptum ex Audientia SS.MI* of 6 December 2019 issued the document “On the confidentiality of legal proceedings” lifting the “pontifical secret” in the cases relating to violence or abuse of authority in forcing sexual acts, sexual abuse of minors or vulnerable persons, crimes of paedophilia involving children under 18 years of age or with incapacitated subjects and the concealment of those conducts from ecclesiastical or civil inquiries.24 Under the new provisions, are excluded from the pontifical secret all the stages of the canonical trials, from the denunciation, to the phase of the preliminary investigations, to the phase of the proper debate, and up to the final decision, as well as any witness statements and documents produced in trial. It concerns both the procedures that take place at the local level, and those that take place in Rome, at the Congregation for the Doctrine of the Faith.

18. The *Vademecum* from the CDF on certain points of procedure in treating cases of sexual abuse of minors committed by clerics was published on 16 July 2020.25 We will deal with these points of procedure in detail in this article.

Thus, the mind of the Holy See concerning the protection of the minors and imposition of penalties on the perpetrators of the crime is well illustrated in the above mentioned legal documents. Pope Francis did not want to make any compromise with the perpetrator of this kind of crimes. The series of documents containing very strict laws promulgated by him is the proof of his bold steps to prevent such abuses in Church.

Guidelines Issued by CBCI, KCBC and Synod of Bishops of the Syro-Malabar Church

On 1 May 2011, the CDF issued a Circular letter to assist Episcopal Conferences in developing Guidelines for dealing with cases of sexual abuse of minors perpetrated by Clerics. The Cardinal Prefect of the CDF urged the Episcopal Conferences to make provision for the implementation of the appropriate canon law and at the same time, allow for the requirements of civil law by the circular letter. The letter has three parts: in the first, it deals with general considerations. The victims and their families must be given suitable assistance for their spiritual and psychological support. There must be ‘safe environments’ for minors in the Church. At the same time special attention must be given for the formation of the future priests and religious. The candidates should be formed in an appreciation of chastity and celibacy and the responsibility of the cleric for spiritual fatherhood. Formation should also assure that the candidates have an appreciation of the Church’s discipline in these matters. The circular letter warns that particular attention is to be given to the necessary exchange of information in regard to those candidates to priesthood or religious life who transfer from one seminary to another, between different dioceses or between religious Institutes and dioceses. The bishop has to treat all his priests as father and brother. In CSA cases, the bishops are to follow the discipline of canon law and civil law for the rights all parties. The accused priest is presumed innocent until the contrary is

26 AAS 103 (2011) 406-412
proven. Nonetheless, the bishop can limit the exercise of the orders until the accusations are clarified. In reporting the sexual abuse cases to the civil authorities, the prescriptions of the civil law should always be followed. The second part of the letter deals with a brief summary of the applicable canonical norms concerning the delict of sexual abuse of minors perpetrated by a cleric. The third part contains suggestions for the Ordinaries on procedures. The guidelines prepared by the Episcopal Conferences ought to help as guidance to the diocesan bishops and major superiors in CSA cases by a cleric.

i. On the basis of these suggestions, the Catholic Bishops Conference of India (CBCI) published the *Procedural Norms for dealing with cases involving sexual abuse of Minors* in 2015.\(^{27}\)

ii. Kerala Catholic Bishops’ Council (KCBC) also issued *KCBC Guidelines for Safe Environment Programme for Church Personnel Connected with Institutions where Minors or Vulnerable Adults are Given Particular Care* in 2018.\(^{28}\)

iii. The same guidelines of the KCBC were accepted by the Synod of Bishops of the Syro-Malabar Major Archiepiscopal Church. The Major Archbishop promulgated the same for the Syro-Malabar Church on 6 June 2019.\(^{29}\)

iv. The Synod of Bishops of the Syro-Malabar Major Archiepiscopal Church made norms for the stable and easily accessible systems to report sexual harassment including child sexual abuse by Church personnel according to the *motu proprio Vos Estis Lux Mundi* of 7 May 2019. The Major


\(^{28}\) Ibid, pp.3-8.

\(^{29}\) *Synodal News*, Vol. 27, 2019, p.75. see, Major Archbishop, *Decree Prot. N.* 0631/2020
Archbishop promulgated on 30 May 2020 *Norms and Procedures of the Eparchial/Archeeparchial Safe Environment Committee in the Syro-Malabar Church*\(^{30}\).

**Indian Civil Law on Child Sexual Abuse**

**i)** *The Information Technology Act 2000 (IT Act 2000)*

Ministry of Information Technology of India established on 17 October 2000 *The Information Technology Act 2000*. Its number 67B states: Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form,—

Whoever,— (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or 26 (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or (d) facilitates abusing children online, or (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children.

**ii)** *The Protection of Children from Sexual Offences Act 2012 (POCSO Act 2012)*

The Indian Government made laws on child sexual abuse which is called *The Protection of Children from Sexual Offences Act 2012 (POCSO Act 2012)*.\(^{31}\) POCSO Act 2012 was established by the


Union Cabinet to protect the children against offences like sexual abuse, sexual harassment and pornography. It was formed to provide a child-friendly system for trial underneath which the perpetrators could be punished. The Act defines a child as any person below eighteen years of age. It also makes provisions for avoiding the re-victimisation of the child at the hands of the judicial system. Protection of Children from Sexual Offences Act, 2012 received the President’s assent on 19 June 2012. It was notified in the Gazette of India on 20 June in the same year.

In preparing the guidelines, CBCI and KCBC took into consideration the pertinent civil law from POCSO Act 2012. It should be noted that Episcopal Conferences, Synod of Bishops, Eparchies and Archeeparchies have taken serious steps to prevent the child sexual abuse and to create safe environment free from any sexual harassment. The Government of India also enacted very severe laws on the child abuse.

**A Vademecum from the CDF to Apply for the Procedural Norms for Cases of Sexual Abuse of Minors Perpetrated by the Clerics**

After having examined the various efforts of the Church to protect the minors from sexual abuse, now we turn our attention to follow the handbook of the CDF in dealing with cases involved sexual abuse of the minors committed by clerics. The *Vademecum* was issued on 16 July 2020 by the Congregation for the Doctrine of the Faith. Since it has not yet been appeared in *Acta Apostolicae Sedis*, I depend on the official website of Vatican. *Vademecum* means a handbook, guide or manual that is carried constantly for use or kept constantly at hand for consultation.

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Context of the Vademecum

Vademecum is a result of the Meeting on the Protection of Minors in the Church convened by Pope Francis from 21 to 24 February 2019 in Vatican City. The context of publication of the Vademecum on certain points of procedure in treating cases of sexual abuse of minors committed by clerics is mentioned in the introductory part of the document. It was prepared by the Congregation for the Doctrine of the Faith as a response to frequent queries about the procedures to be observed in those penal cases of the sexual abuse of minors by clerics.

The Purpose of the Vademecum

This is meant to serve as a handbook or manual for those charged with ascertaining the truth in criminal cases involved CSA by clerics, leading them step-by-step from the notitia criminis to the definitive conclusion of the case. The purpose of this handbook is to assist dioceses, eparchies, Institutes of Consecrated Life and Societies of Apostolic Life, Episcopal Conferences, Synods of Bishops, and the various ecclesiastical circumscriptions to understand and implement the requirements of justice regarding a delictum gravius in a better manner. Its use is to be encouraged, since a standardized praxis will contribute to a better administration of justice.

The Vademecum issues no new norms

It does not issue new norms or alter current canonical legislation but seeks to clarify the various stages of the procedures involved. Therefore, when we use this handbook, we should observe the following norms:

1. The pertinent canons of both CIC and CCEO. The document makes it clear that no choice was made to include in

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this *Vademecum* for carrying out the judicial penal process in the first grade of judgment, since it was felt that the procedure set forth in the present Codes is sufficiently clear and detailed.

2. The *Norms on Delicts Reserved to the Congregation for the Doctrine of the Faith* in the revised 2010 version, issued with the Motu proprio *Sacramentorum Sanctitatis Tutela* (SST) taking account of the revisions introduced by the *Rescripta ex Audientia* of 3 and 6 December 2019.

3. The Motu proprio *Vos Estis Lux Mundi* (VELM) promulgated on 7 May 2019 by Pope Francis.

4. The praxis of the Congregation for the Doctrine of the Faith, which has in recent years become increasingly clear and consolidated.

Intended to be flexible, this manual can be periodically updated if the norms to which it refers are modified, or if the praxis of the Congregation calls for further clarifications and revisions. This is the “Version 1.0”, which could be updated if and when necessary. Now we examine the procedure for the cases CSA by clerics as envisaged in *Vademecum*.

**I. Extension of the Delict and the Preliminary Notes**

*Vademecum* provides some preliminary notes concerning the crime in question. This handbook guides the Ordinaries and Hierarchs or their delegates to apply the canonical norms governing cases of the sexual abuse of minors by clerics.

*Crime in Question*

Art. 6 § 1, nn. 1 and 2 of the revised SST states the nature of this crime: the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor. Art. 6 § 1, 2° *Sacramentorum Sanctitatis Tutela*.
Sanctitatis Tutela is replaced in its entirety by the following text:\(^{34}\):

“The acquisition, possession or distribution of pornographic images of minors under the age of eighteen by a cleric for purposes of sexual gratification, by whatever means or using whatever technology”. Originally, instead of ‘under the age of eighteen’, it was given ‘under the age of fourteen’. The Vademecum states that the extension of this crime can include sexual relations (consensual or non-consensual), physical contact for sexual gratification, exhibitionism, masturbation, the production of pornography, inducement to prostitution, conversations and/or propositions of a sexual nature, which can also occur through various means of communication. Thus the typology of this delict is quite broad (V, n.2)\(^ {35}\).

There are three new delicts in SST involving minors, i.e., acquisition, possession (even temporary) or distribution by a cleric of pornographic images of minors under the age of 14 (as of 1 January 2020, under the age of 18) for purposes of sexual gratification by whatever means or using whatever technology. From 1 June to 31 December 2019, the acquisition, possession, or distribution of pornographic material involving minors between 14 and 18 years of age by clerics or by members of Institutes of Consecrated Life or Societies of Apostolic Life are delicts for which other Dicasteries are competent (cf. arts. 1 and 7 VELM). From 1 January 2020, the CDF is competent for these delicts if committed by clerics (V, n. 6).\(^ {36}\) It should be noted that these three delicts can be addressed canonically only after the date that SST took effect, namely, 21 May 2010 (V. n. 7).

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\(^{35}\) ‘V, n’ refers to the numbers of Vademecum

**Minor**

This handbook acknowledges that the concept of “minor” in these cases has varied over the course of time. For example, in the context of penalties for particular offences, CIC c. 1395§2 mentions the delict of a cleric who offended against the sixth commandment of the Decalogue, if the offence was committed with a minor under the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants. After 30 April 2001, with the promulgation of the *Motu proprio ‘Sacramentorum Sanctitatis Tutela’*, the age was universally raised to 18 years, and this is the age currently in effect. However, it is to be noted that both CCEO c. 909§1 and CIC c. 97§1 define a minor as a person who is below the age of eighteen. *Vademecum* says that these variations must be taken into account when determining whether the “minor” in question was in fact such, according to the legal definition in effect at the time of the facts. The handbook also stated that the use of the term “minor” does not reflect the distinction occasionally proposed by the psychological sciences between acts of “paedophilia” and those of “ephebophilia”, that is, involving post-pubescent adolescents. Their degree of sexual maturity does not affect the canonical definition of the delict (V, nn. 3-4).

**Vulnerable Adult**

Art. 6 § 1 n.1 of the revised SST states that, a person who habitually has the imperfect use of reason is to be considered equivalent to a minor. *Vademecum* refers to the *Motu proprio ‘Vos Estis Lux Mundi’*(VELM) (art. 1§ 2, b) to explain the use of the term “vulnerable adult” (V, n. 5). This means, “Any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally limits their ability to understand or to want or otherwise resist the offence”.
The Competence of the Congregation for the Doctrine of the Faith

We have seen that it was Pope St. John Paul II who raised the age of a minor to eighteen and placed the delict of the sexual abuse of a minor by a cleric under the exclusive competence of the CDF. It should be noted that there are other situations besides those pertaining to the competence of the CDF, which remains limited to minors under eighteen years of age and to those who, habitually have an imperfect use of reason. Other situations outside of these cases are handled by the competent Dicasteries. For example, if a non-clerical religious major superior committed a crime of sexual abuse with a minor under age of eighteen. Since the perpetrator is not a cleric, it is not reserved to the Congregation of the Doctrine of the Faith. The *Motu proprio Vos Estis Lux Mundi* gives a list of other competent dicasteries in its art. 7 § 1. They are: 1) The Congregation for the Oriental Churches 2) The Congregation for Bishops 3) The Congregation for the Evangelization of Peoples. 4) The Congregation for the Clergy. 5) The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. However, these dicasteries do not enjoy judicial power (V, n. 6).

For Latin Religious

In accordance with the law governing religious who are members of the Latin Church (cf. canons 695ff. CIC), the delict mentioned in *Vademecum*, n. 1 can also entail dismissal from a religious Institute. Confirmation of the decree of dismissal demanded by canon 700 CIC must be requested from the CDF. Such dismissal is not a penalty, but rather an administrative act of the supreme Moderator (V, n. 8). There is no counterpart for CIC c. 695 in CCEO. Unlike in CIC c. 1395§ 2, sexual abuse of a minor by a cleric is not mentioned in CCEO c. 1453§ 1.
II. Information About a Possible Delict and the Action to be taken by the Ordinary or Hierarch

*Notitia de delicto*

The Ordinary or the Hierarch receives information about a possible delict of sexual abuse of the minor by a cleric as indicated in SST art. 6 and VELM art. 1. a, iii. These delicts include the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years and vulnerable adults; the production, exhibition, possession or distribution, including by electronic means, of child pornography, as well as by the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions. A *notitia de delicto* or *notitia criminis* consists of any information about a possible delict that in any way comes to the attention of the Ordinary or Hierarch. It need not be a formal complaint (CIC c. 17171§ 1; CCEO c. 1468§ 1; SST art.16; VELM art.3, V, n. 9).

The handbook gives a variety of sources not excluding an anonymous source from which the *notitia de delicto* can come. They are the following (V, n. 10):

1. It can be formally presented to the Ordinary or Hierarch, orally or written by the alleged victim, his or her guardians or other person claiming knowledge about the matter.
2. It can become known to the Ordinary or Hierarch through the exercise of his duty of vigilance.
3. It can be reported to the Ordinary or Hierarch by the civil authorities through channels provided for by local legislation.
4. It can be made known through the communications media (including social media).
5. It can come to his knowledge through hearsay, or in any other adequate way.
6. At times, a notitia de delicto can derive from an anonymous source, namely, from unidentified or unidentifiable persons.

**Notitia de delicto under certain situations**

1. If a notitia de delicto comes from an anonymous source that is from an unidentified or unidentifiable person, one cannot automatically conclude that the accusation is false. The authority is to be careful in considering this type of notitia and should not encourage anonymous petitions (V, n. 11).

2. When a notitia de delicto comes from sources whose credibility might appear at first doubtful, it is not advisable to dismiss the matter a priori (V, n. 12).

3. If a notitia de delicto lacks specific details like names, dates, times etc. or even if vague and unclear, it should be appropriately assessed and, if reasonably possible, given all due attention (V, n. 13).

4. If a confessor came to know about a grave crime during the celebration of the sacrament of penance, without prejudice to his grave obligation of observing secrecy, the confessor should seek to convince the penitent to make that information known by other means, in order to enable the appropriate authorities to take action (V, n. 14).

The Vademecum states that the Ordinary or Hierarch has the responsibility for vigilance but it does not demand that that he constantly screen the clerics subject to him. However, he should adopt necessary measures to keep him be informed about his clerics’ conduct in these areas, especially if he becomes aware of suspicions, scandalous behaviour, or serious misconduct (V, n. 15).

**The Responsible Persons to give a notitia de delicto**

VELM art. 3 indicates the persons who can report a crime of sexual abuse of the minor by a cleric. A cleric or a member of an
Institute of Consecrated Life or of a Society of Apostolic Life who came to know about the crime, he or she has the obligation to report promptly the fact to the local Ordinary or local Hierarch where the event took place or to another Ordinary or Hierarch among those referred to in canons 134 of CIC and 984 of CCEO. He or she can report to the same authority if there are well-founded motives to believe that one of the facts referred to in art. 1 of VELM has been committed. Any other person also can submit a report concerning the conduct referred to the crime in question using the methods referred to in the preceding article, or by any other appropriate means. Information can also be acquired *ex officio*.

The report shall include as many particulars as possible, such as indications of time and place of the facts, of the persons involved or informed, as well as any other circumstance that may be useful in order to ensure an accurate assessment of the facts.

*Notitia de delicto concerning High Dignitaries of the Church*

If the crime in question is carried out by a bishop of the Latin Church, the *notitia de delicto* is presented in the following manner (VELM art. 8):

1. The authority that receives a report transmits it both to the Holy See and to the Metropolitan of the Ecclesiastical Province where the person reported is domiciled.

2. If the report concerns the Metropolitan, or the Metropolitan See is vacant, it shall be forwarded to the Holy See, as well as to the senior suffragan bishop by promotion.

3. In the event that the report concerns a Papal Legate, it shall be transmitted directly to the Secretariat of State.

4. If the report concerns clerics who are, or who have been, the pastoral heads of a particular Church or of an entity assimilated to it, of the Latin Church including the Personal Ordinariates, for the acts committed *durante munere*; The report can always be
sent to the Holy See directly or through the Pontifical Representative.

5. If the reports concerns clerics who are or who have been in the past leaders of a Personal Prelature, for the acts committed *durante munere*. The report can always be sent to the Holy See directly or through the Pontifical Representative.

6. If the report concerns those who are, or who have been, supreme moderators of Institutes of Consecrated Life or of Societies of Apostolic Life of Pontifical right, as well as of a religious house of canons regular or of monks with respect to the acts committed *durante munere*. The report can always be sent to the Holy See directly or through the Pontifical Representative.

If the crime in question is carried out by a bishop of the Eastern Catholic Churches the *notitia de delicto* is presented in the following manner (VELM art. 9):

1. Reports concerning a bishop of a Patriarchal, Major Archiepiscopal or Metropolitan Church *sui iuris* shall be forwarded to the respective Patriarch, Major Archbishop or Metropolitan of the Church *sui iuris*. The Authority who receives the report shall forward it to the Holy See.

2. If the report concerns a Metropolitan of a Patriarchal or Major Archiepiscopal Church, who exercises his office within the territory of these Churches, it is forwarded to the respective Patriarch or Major Archbishop. The Authority who receives the report shall also forward it to the Holy See.

3. If the person reported is a bishop or a Metropolitan outside the territory of the Patriarchal, the Major Archiepiscopal or the Metropolitan Church *sui iuris*, the report shall be forwarded to the Holy See.

4. In the event that the report concerns a Patriarch, a Major Archbishop, a Metropolitan of a Church *sui iuris* or a bishop
of the other Eastern Catholic Churches *sui iuris*, it shall be forwarded to the Holy See.

5. If the report concerns clerics who are, or who have been, the pastoral heads of a particular Church or of an entity assimilated to it of the oriental Churches, including the Personal Hierarch, for the acts committed *durante munere*. The report can always be sent to the Holy See directly or through the Pontifical Representative.

6. If the report concerns those who are, or who have been, supreme moderators of Institutes of Consecrated Life or of Societies of Apostolic Life of Pontifical right, as well as of monasteries *sui iuris*, with respect to the acts committed *durante munere*. The report can always be sent to the Holy See directly or through the Pontifical Representative.

*The actions to be taken upon receiving a notitia de delicto*

Upon receiving a *notitia de delicto*, the Hierarch has to make a preliminary investigation. CCEO c. 1468 states, “Whenever the hierarch has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an investigation seems entirely superfluous”. SST art. 16 stipulates, “Whenever the Ordinary or Hierarch receives a report of a more grave delict, which has at least the semblance of truth, once the preliminary investigation has been completed, he is to communicate the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch how to proceed further, with due regard, however, for the right to appeal against a sentence of the first instance only to the Supreme Tribunal of this same Congregation when called for.” Thus, the responsibility for the preliminary investigation belongs to the Ordinary or Hierarch who received the *notitia de delicto*, or to a suitable person selected by him. This task belongs to the Ordinary or
Hierarch of the accused cleric or, if different, the Ordinary or Hierarch of the place where the alleged delicts took place. In the latter case, it will naturally be helpful for there to be communication and cooperation between the different Ordinaries involved, in order to avoid conflicts of competence or the duplication of labour, particularly if the cleric is a religious. The preliminary canonical investigation must be carried out independently of any corresponding investigation by the civil authorities.

The eventual omission of this duty could constitute a delict subject to a canonical procedure in conformity with the Code of Canon Law and the Motu proprio *Come una madre amorevole*, as well as art. 1 § 1, b of VELM. If the Ordinary or Hierarch meets any obstacle to initiate or to carry out the preliminary investigation, he should immediately contact the CDF for advice or help to resolve the problems. For example, in those cases where state legislation prohibits investigations parallel to its own, the ecclesiastical authorities should refrain from initiating the preliminary investigation and report the accusation to the CDF, including any useful documentation. In cases where it seems appropriate to await the conclusion of the civil investigations in order to acquire their results, or for other reasons, the Ordinary or Hierarch would do well to seek the advice of the CDF in this regard (V, n. 26). The Ordinary or the Hierarch can seek the advice of the CDF at any time during investigation of the case. He can also freely consult with experts in canonical penal matters but with utmost care to avoid any inappropriate or illicit diffusion of information to the public. Because, that could prejudice the investigation or give the impression that the facts or the guilt of the cleric in question have already been established with certainty (V, n. 29). Though one is bound to observe the secret of office even at the preliminary stage, an obligation of silence about the allegations cannot be imposed on the

An Ordinary or Hierarch who has received a *notitia de delicto* must transmit it immediately to the Ordinary or Hierarch of the place where the events were said to have occurred, as well as to the proper Ordinary or Hierarch of the person reported. That means, in the case of a religious, to his Major Superior, if the latter is his proper Ordinary, and in the case of a diocesan priest, to the Ordinary of the diocese or the eparchial Bishop of incardination. In cases where the local Ordinary or Hierarch and the proper Ordinary or Hierarch are not the same person, it is preferable that they contact each other to determine which of them will carry out the investigation. In cases where the report concerns a member of an Institute of Consecrated Life or a Society of Apostolic Life, the major superior will also inform the supreme Moderator and, in the case of Institutes and Societies of diocesan right, also the respective bishop (V, n. 31).

**Prescription for the criminal action**

According to SST art. 7, the criminal actions against morals which are reserved to the Congregation for the Doctrine of the Faith are extinguished by prescription after twenty years. Here the prescription begins to run from day on which a minor completes his eighteen year of age (SST art. 7§2). The same article permits the CDF to derogate from prescription in individual cases. Therefore, an Ordinary or Hierarch who has determined that the times for prescription have elapsed must still respond to the *notitia de delicto* and carry out the eventual preliminary investigation, communicating its results to the CDF, which is competent to decide whether prescription is to be retained or to grant a derogation from it. The Ordinary or the Hierarch should express his personal opinion regarding an eventual derogation, basing it on concrete circumstances like cleric’s health condition, age, ability to exercise right of self-defence, harm caused by the alleged criminal act, scandal given etc. (V, n. 28).
The Obligation to report the Case to the Civil Authorities
(see also V, n. 48 ff)

The preliminary investigation should be carried out by the Ordinary or Hierarch with respect for the civil laws of each State (V, n. 27). Article 19 of VELM stipulates that the application of the norms used in the investigation has to take into consideration the rights and obligations established in each place by State laws, particularly those concerning any reporting obligations to the competent civil authorities. Vademecum states that if it is necessary to protect the person involved or other minors from the danger of further criminal acts, the Church authorities should make a report to the competent civil authorities (V, n. 17). According to the POCSO ACT 2012 of India, any person including child has apprehension or knowledge that such an offence has been committed; he shall provide such information to a) the special Juvenile Police Unit b) to the local police [POCSO Act, 2012, Section 19 (1)]. Any person who fails to report the commission of an offence under subsection (1) of the section 19 or section 20 or who fails to record such offence under subsection (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both [POCSO Act, 2012, Section 21 (1)]

Any person, being incharge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine [POCSO Act, 2012, Section 21(2)]. No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1) of 19 [POCSO Act, 2012, Section 19 (7)]. Any person who makes false complaint or provides false information against any person, in respect of any offence committed under sections 3,4,5,7, and 9, solely with the intention to humiliate, extort or threaten or defame him, shall be
punished with imprisonment for a term which may extend to six months or with fine or with both [POCSO Act, 2012, 20(1)].

*The notitia de delicto that lacks the semblance of truth*

The reported delict should have at least the semblance of truth. If that credibility proves unfounded, there is no need to pursue the *notitia de delicto*, although care should be taken to keep the documentation, together with a written explanation regarding the reasons for the decision (V, n. 16). A determination to omit the preliminary investigation is to be only in the case of clear impossibility of proceeding according to canon law. The fact that sins against the sixth commandment of the Decalogue rarely occur in the presence of witnesses may cause the *notitia de delicto* absence of the semblance of truth. Other difficulties like for example, if it turns out that at the time of the delict of which he is accused, the person was not yet a cleric; if it comes to light that the presumed victim was not a minor; if it is a well-known fact that the person accused could not have been present at the place of the delict when the alleged actions took place etc. also can come up. In such cases the Ordinary or Hierarch may communicate the matter to the CDF and the decision made to omit the preliminary investigation due to clear absence of the semblance of truth.

The *Vademecum* recommends the Ordinary or the Hierarch to protect the common good and to avoid scandal by administrative provisions with regard to the person accused. If improper and imprudent conduct is seen in him, even in the absence of a delict involving minors, restrictions on his ministry can be imposed or to impose the penal remedies mentioned in canon 1339 of CIC for the purpose of preventing delicts (cf. CIC c. 1312 § 3 CIC) or to give the public reprimand referred to in canon 1427 CCEO. In the case of delicts that are *non graviora*, the Ordinary or Hierarch should employ the juridical means appropriate to the particular circumstances (V, n. 20).
III. Procedure of the Preliminary Investigation

As we have seen above, the preliminary investigation takes place according to canon 1717 of CIC or canon 1468 of CCEO. Here we explain in detail the criteria and procedures to be observed in the preliminary investigation.

a) The Preliminary Investigation: What is the preliminary investigation? It is not a trial; it does not seek to attain moral certitude as to whether the alleged crime occurred. It serves (V, n. 33):

i) to gather data useful for a more detailed examination of the notitia de delicto.

ii) to determine the credibility of the report, that is, to determine that which is called fumus delicti, namely the sufficient basis both in law and in fact so as to consider the accusation as having the semblance of truth.

The preliminary investigation should gather detailed information about the notitia de delicto with regard to facts, circumstances and imputability (CCEO c. 1468§1). The Vademecum reminds us that at this phase, it is not necessary to assemble complete elements of proof including testimonies, expert opinions etc. This belongs to the task of an eventual subsequent penal procedure. At this phase the important thing is to reconstruct, to the extent possible, the facts on which the accusation is based, the number and time of the criminal acts, the circumstances in which they took place and general details about the alleged victims, together with a preliminary evaluation of the eventual physical, psychological and moral harm inflicted. It must always be observed that any danger of violating the sacramental seal be altogether avoided [(SST art. 24§3)(V, n. 34)].

At this point i) the preliminary investigator can add other connected delicts attributed to the accused ii) it can be useful to assemble testimonies and documents, of any kind or provenance including the results of investigations or trials carried out by civil
authorities iii) these would be helpful for substantiating and validating the credibility of the accusation iv) it is likewise possible at this point to indicate eventual exempting, mitigating or aggravating factors, as provided for by law v) It could also prove helpful to collect at this time testimonials of credibility with regard to the complainants and the alleged victims vi) A schematic outline of useful data that those carrying out the preliminary investigation will want to compile and have at hand (cf. V, n. 69) vii) if other notitiae de delicto emerges during the preliminary investigation these must also be included in the same investigation (V, n. 35).

**Situations in which the preliminary canonical investigation becomes unnecessary**

The *Vademecum* suggests that there are situations in which the preliminary canonical investigation becomes irrelevant. As part of preliminary investigation, the results or trials of civil investigations could be collected. These proofs could make the preliminary canonical investigation unnecessary. At the same time the handbook warns the one who makes the investigation to examine the civil investigation carefully because the criteria used in the civil investigation can vary significantly with respect to the norms of canon law. In case of doubt, we can consult with the CDF (V, n. 36). In the case of a notorious and indisputable crime, the preliminary investigation becomes unnecessary. This may be clear from the acquisition of the civil proceedings or an admission on the part of the cleric (V, n. 37).

**b) Appointment of a suitable person to carry out the preliminary investigation**

The ordinary or the Hierarch can appoint a suitable person using the criteria in c. 1093 of CCEO (CIC c. 1428§§ 1-2) to carry out the preliminary investigation (V, n. 38). According to CCEO c. 1093 §§ 1-3, the judge or president of a collegiate tribunal can appoint an auditor. He must be a judge in the tribunal or another faithful admitted this office by the eparchial bishop. They must be members of the Christian faithful outstanding for their good character, prudence and
doctrine. The cooperation of the lay person according to CCEO c. 408 (CIC c. 228), can be accepted by the hierarch. That means lay persons who excel in the necessary knowledge, experience and integrity, are qualified to be heard as experts or consultors by ecclesiastical authorities, whether individually or as members of various councils and assemblies, whether parochial, eparchial or patriarchal. VELM art. 13 gives details of such cooperation: The authorities may establish lists of qualified persons from which the Metropolitan may choose those most suitable to assist in the investigation, according to the needs of the individual case. Any person assisting the authority must act impartially and must be free of conflicts of interest. The persons assisting the authorities shall take an oath to fulfil their charge properly (V, n. 39)

The hierarch is to issue a decree (CCEO c. 1470, CIC c. 1719) opening the preliminary investigation with the names of the persons conducting the investigation. In the text of the decree the hierarch has to indicate that the investigator enjoys those powers referred in CCEO c. 1468§3 (CIC c. 1717§3). This canon states that the person who conducts the investigation has the same powers and obligations as an auditor in the process (V, n. 40). CCEO c. 1093§3 states that the auditor can only collect the proofs and hand those collected to the judge. The auditor can decide what proofs are to be collected and in which manner, according to the mandate of the judge. The hierarch should keep in mind that if a penal judicial process is initiated, these same person cannot act as a judge in the matter (CCEO c. 1468§ 3, CIC c. 1717 § 3). The same criterion is used in appointing the Delegate and the Assessors in the case of an extrajudicial process.

Appointment of Promotor of Justice, Notary and an official advocate in the preliminary stage

At this investigative phase, the appointment of a promotor of Justice is not foreseen (V, n. 43). Although not expressly provided for by law, it is advisable that a priest notary be appointed, who assists
the person conducting the preliminary investigation, for the purpose of ensuring the authenticity of the acts which have been drawn up (CCEO c. 1101§ 2, CIC c. 1437§ 2) (V, n. 41). It should be noted, however, that since these are not the acts of a process, the presence of the notary is not necessary for their validity (CCEO c.1101 § 1). According to CCEO c. 253§ 2, in cases that could involve the reputation of a cleric the notary must be a priest (V, n. 42).

Since this is a preliminary phase prior to a possible process, it is not obligatory to name an official advocate for the accused. If he considers it helpful, however, he can be assisted by a patron of his choice (V, n. 54).

c) The Complementary acts to be carried out during the Preliminary Investigation

1. Good name of the persons involved: Protection of the good name of the persons involved is very important (CCEO c. 1468 § 2, CIC c. 1717§ 2). VELM art. 5 §2 also stipulates that the good name and the privacy of the persons involved, as well as the confidentiality of their personal data, shall be protected. The persons involved are the accused, alleged victims, witnesses etc. The report should not lead to prejudice, retaliation or discrimination in their regard. The one who carries out the preliminary investigation must therefore be particularly careful to take every possible precaution not to harm illegitimately the good reputation of others and to respect the right of others to protect his or her privacy (CCEO c. 23, CIC c. 220). It should be noted, however, that those canons protect that right from illegitimate violations. That means, if the common good is endangered, the release of information does not constitute an illegitimate violation of one’s good name (V, n. 44). Vademecum further states that the persons involved are to be informed that if the civil authorities demanded the acts of the investigation, the Church has no guarantee regarding the confidentiality of the depositions and documentation acquired from the canonical investigation.
2. *Public or private statements* (V, n. 45): In any event, especially in cases where public statements must be made, great caution should be exercised in providing information about the facts. Statements should be brief and concise, avoiding clamorous announcements, refraining completely from any premature judgment about the guilt or innocence of the person accused. Here the privacy of the alleged victims must be respected. In this phase the possible guilt of the accused is not established. Therefore, all care should be taken to avoid any affirmation made in the name of the Church, the Institute or Society, or on one’s own behalf, that could constitute an anticipation of judgement on the merits of the facts in public or private communication (V, n. 46).

3. *Obligation to observe secrecy of office* (V, n. 47): Accusations, processes and decisions related to delicts mentioned in SST art. 6 are subject to the secret of office. However, this does not prevent persons reporting, especially if they also intend to inform the civil authorities, from making public actions. Since not all forms of *notitiae de delicto* are formal accusations, it is possible to evaluate whether or not one is bound by the secret, always keeping in mind the respect for the good name of others referred to in V, n. 44.

4. *Obligation to inform the civil authorities*: With regard to reporting the *notitia de delicto* and the opening of the preliminary investigation to the civil authorities the handbook gives principles. a) Respect for the law of the state (VELM art. 19), b) respect for the desire of the alleged victim, provided that this is not contrary to civil legislation. The alleged victims should be encouraged to exercise their rights and duties in relation to the state authorities. This encouragement is to be documented to avoid any form of discouragement with regard to the alleged victim. Here the relevant agreements like concordats, accords, protocols of understanding entered by the Apostolic See with national governments must always and in any event be observed (V, n. 48). The Ordinary or the hierarch is obliged to report a *notitia de delicto* when the laws of the state require doing so. There can be
variation for the definition of the crime or the penal action is extinguished by prescription. Therefore, the civil authorities may not take actions on the basis of the laws of the State. Even in this situation, the hierarch has to report the crime to the civil authority (V, n. 49). The Ordinary or Hierarch must cooperate with the civil authorities whenever civil judicial authority issues order to surrender the documents regarding cases or order the judicial seizure of such documents. In case of doubt about the legitimacy of such an order or seizure, the Ordinary or Hierarch can consult legal experts about available means of recourse. In any case, it is advisable to inform the Papal Representative immediately (V, n. 50).

5. Precaution to hear minors: If it necessary to hear the minors or persons equivalent to them, the civil norms of the country should be followed. The one who makes the investigation has to use the methods suited to their age or condition, permitting for example, that the minor be accompanied by a trusted adult and avoiding any direct contact with the person accused (V, n. 51).

6. When to inform the person being accused: There is no uniform criterion or explicit law concerning the moment during the investigation when the accused is to be informed of the accusation (V, n. 53). The Ordinary or Hierarch has to decide if and when to inform the person being accused during the investigation process. To inform the accused person is a particularly sensitive task (V, n. 52). An assessment must be made of all the goods at stake. In addition to the protection of the good name of the persons involved, consideration must also be given, for example, to the risk of compromising the preliminary investigation or giving scandal to the faithful, and the advantage of collecting beforehand all evidence that could prove useful or necessary (V, n. 53). If it is decided to question the accused person, he can be assisted by a patron of his choice because, it is not obligatory to name an official advocate for him at this phase of investigation. An oath cannot be imposed on the accused person (cf. ex analogia, canons CIC c1728 § 2, CCEO c. 1471 § 2). (V, n. 54)
7. Treat the alleged victim and his/her family with dignity and respect: The Church authorities must ensure that the alleged victim and his or her family are treated with dignity and respect. More than that the victim and the relatives are to be welcomed, listened and supported including through specific provision services. They must be offered spiritual, medical and psychological help as required by the case (VELM art. 5). The same can be done with regard to the accused. One should, however, avoid giving the impression of wishing to anticipate the results of the process (V, n. 55). It is absolutely necessary to avoid in this phase any act that could be interpreted by the alleged victim as an obstacle to the exercise of his or her civil rights (V, n. 56).

8. Reference to the structures of information and support: If there are structures of information and support, it is helpful to refer to them for advice, guidance and assistance of the alleged victims or of consultation for the ecclesial authority. Vademecum specially mention that their analyses do not in any way constitute canonical procedural decisions. These structures can be of the state or the Church (V, n. 57).

9. Imposition of the precautionary measures: In accordance with SST art. 19, the Ordinary or Hierarch has the right, from the outset of the preliminary investigation, to impose the precautionary measures listed in canons 1722 CIC and 1473 CCEO. This is to defend the good name of the persons involved and to protect the public good, as well as to avoid other factors for example, the rise of scandal, the risk of concealment of future evidence, the presence of threats or other conduct meant to dissuade the alleged victim from exercising his or her rights, the protection of other possible victims etc. (V, n. 58)

Canon 1473 of CCEO (CIC c. 1722) states, “To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the hierarch, after having heard the promotor of justice and cited the accused, at any stage and grade of the penal trial can exclude the accused from the exercise of sacred orders, an office, a ministry,
or another function, can impose or forbid residence in some place or territory, or even can prohibit public reception of the Divine Eucharist. Once the cause ceases, all these measures must be re-voked and they end by the law itself when the penal trial ceases.” From this list one or more of those delineated can be chosen (V, n. 59). The Ordinary or Hierarch can impose other disciplinary measures within his power (V, n. 60).

d) **The procedure to impose precautionary measures**

A precautionary measure is different from a penalty because penalties are imposed only after a legal penal process. It is an administrative act to avoid scandal, protect the freedom of witnesses and safeguard the course of justice. As seen in CCEO c. 1473, it is not the judge but the hierarch who impose them. He may do it at any stage of trial after having heard the promotor of justice and having summoned the accused to appear. The measures given in this canon are: 1) exclude the accused from the exercise of sacred orders, an office, a ministry or another function 2) prohibit residence in some place or territory 3) prohibit public reception of the Divine Eucharist.

The accused must be explained that these measures are not penalty; otherwise the accused might think that he has already been convinced and punished from the start. Once the cause ceases, all these measures must be re-voked and they end by the law itself when the penal trial ceases. They cease automatically when the penal process is finished. The authority can modify the measures if circumstances so demand. In revoking the precautionary measures the authority must be prudent in judging the whether the reason that suggested them has ceased. According to the discernment of the authority, the revoked measures can be re-imposed (V, n. 61). In using the terminology, *Vademecum* propose to use prohibition instead of suspension because the latter term is used for a penalty which cannot be imposed at this stage. For example, instead of suspension from the ministry, prohibition from the exercise of the ministry can be used (V, n. 62). Another
important point in this regard is that a mere transfer doesn’t solve the problem. Transferring the accused from his office, region or religious house with the intention to distance him from the alleged victims or the place of crime is not a sufficient solution (V, n. 63).

The precautionary measures referred to in V, n. 58 are imposed by a singular precept, legitimately made known (cf. CIC canons 49ff. and 1319 and CCEO canons 1406 and 1510ff.) (V, n. 64). It should be noted that whenever a decision is made to modify or revoke precautionary measures, this must be done by a corresponding decree, legitimately made known. This will not be necessary, however, at the conclusion of the possible process, since at that moment those measures cease to have legal effect (V, n. 65).

e) Conclusion of the preliminary investigation

The duration of the preliminary investigation should correspond to the purpose of the investigation which is to assess the credibility of the notitia de delicto and hence the sign of the crime. It is necessary for the sake of equity and a reasonable exercise of justice. Therefore, unjustified delay in the preliminary investigation may constitute an act of negligence on the part of ecclesiastical authority (V, n. 66). If the investigation has been carried out by a suitable person appointed by the Hierarch, he or she has to hand over all the acts of the investigation together with a personal evaluation of its results (V, n. 67). When the investigation is completed, the hierarch must issue a decree of conclusion of the preliminary investigation (CCEO c. 1470).

Sending the acts of the preliminary investigation to the CDF

Once the preliminary investigation has concluded, whatever its outcome, the hierarch is obliged to send an authentic copy of the acts of the preliminary investigation together with the tabular summary for cases of Delicta Reservata to the Congregation for the Doctrine of the Faith. The hierarch has to send his votum and offer any suggestions he may have on how to proceed. For example, if he considers it appropriate to initiate a penal procedure and of what kind;
if he considers sufficient the penalty imposed by the civil authorities; if the application of administrative measures by the Ordinary or Hierarch is preferable; if the prescription of the delict should be declared or its derogation granted (V, n. 69).

If the preliminary investigation was carried out by a major superior, he has to transmit a copy of all documentation related to the investigation to the supreme Moderator or to the Eparchial Bishop if the religious institute or Societies are of eparchial right. This Moderator or the bishop should send the acts together with his votum to the CDF (V, n. 70).

The acts are to be sent in a single copy authenticated by a notary who is a member of the curia unless a specific notary had been appointed for the preliminary investigation (V, n. 72). The original of all the acts is to be kept in the secret archive of the Curia as stated in CCEO c. 1470 (73). Once the acts have been sent to the CDF, the hierarch has to await communications or instructions in this regard from the CDF (V, n. 74).

If the hierarch who carried out the preliminary investigation is not the hierarchy of the place where the alleged delict was committed, he is to communicate to the latter the results of the investigation (V, n. 71).

Further Communications with the CDF: If other elements related to the preliminary investigation or new accusations should emerge in the meantime, these are to be forwarded to the CDF as quickly as possible, in order to be added to what is already in its possession. If it appears useful to reopen the preliminary investigation on the basis of those elements, the CDF is to be informed immediately (V, n. 75).

IV. The Procedure in CDF

1. Upon the receipt of the acts of the preliminary investigation ordinarily the CDF immediately sends an acknowledgement to
the hierarch communicating the protocol number corresponding to the case. Reference must be made to this number in all further communication with the CDF. In the case of religious, acknowledge is sent also to the Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life; if the cleric is from an Eastern Church, to the Congregation for Oriental Churches; and to the Congregation for the Evangelization of Peoples if the cleric belongs to a territory subject to that Dicastery (V, n. 76).

2. The CDF carefully examines the acts and decides how to proceed with the case. It can archive the case; request a more thorough preliminary investigation; impose non-penal disciplinary measures, ordinarily by a penal precept; impose penal remedies or penances, or warnings or rebukes; initiate a penal process; or identify other means of pastoral response. The CDF communicates its decision to the hierarch with suitable instruction for its execution (V, n. 77):

a) **Non-penal disciplinary measures**: CDF can impose non-penal disciplinary measures by means of singular administrative acts by which the accused is ordered to do or to refrain from doing something (CCEO c. 1510§2 n.2). In these cases, limits are ordinarily imposed on the exercise of the ministry, of greater or lesser extent in view of the case, and also at times the obligation of residing in a certain place. It must be emphasized that these are not penalties, but acts of governance meant to ensure and protect the common good and ecclesial discipline, and to avoid scandal on the part of the faithful (V, n. 78).

b) **Penal Precept**: After a thorough consideration of the matter and with the utmost moderation, threaten determined penalties by precept (CCEO c. 1406§1). A warning containing the threat of penalties by which the hierarch presses a non-penal law in individual cases, is equivalent to a penal precept (V, n. 79). Since
it involves a penal precept, the text must clearly indicate the penalty being threatened if the recipient of the precept were to violate the measures imposed on him (V, n. 80). It should be kept in mind that a penal precept cannot impose perpetual expiatory penalties; furthermore, the penalty must be clearly defined (V, n. 81). The exclusions of penalties are mentioned in CCEO c. 1406§1 for the faithful of the Eastern Churches: privation of office, title, insignia or a suspension for more than one year, demotion to a lower grade, deposition or major excommunication (CCEO c.1402§2). However, such administrative act admits recourse within the terms of law (V, n. 82), which is within the peremptory time limit of fifteen days (CCEO c. 1001§1).

c) **Penal remedies, penances and public rebukes** (V, n.83): A public rebuke is to occur before a notary or two witnesses or by letter but in such a way that the reception and content of the letter are established by some document (CCEO c.1427§ 1). Care must be taken that the public rebuke itself does not result in a greater disgrace of the offender than is appropriate (CCEO c. 1427§2). According to CIC c. 1339, “the Ordinary can issue a warning in order to prevent someone subject to his authority from committing an offence or, if there is an objective reason to believe that an offence has already been committed, to ensure against its recurrence… In addition to the warning, the Ordinary can also reprove or correct someone, if that person’s behaviour is such that it gives rise to scandal or a serious disturbance of the public order”.38

V. Possible Decisions in a Penal process

Three types of decisions are possible in a penal process (V, n. 84):

1. Conviction (*constat*): If the crime of the accused is established with moral certainty, it is conviction. Here the type of canonical sanction imposed or declared must be indicated in the decision.

2. Acquittal (*constat de non*): If the innocence of the accused is established with moral certainty that is, no offence was committed by the accused, it is acquittal. The offence is not deemed a delict by the law or was committed by a person who is not imputable.

3. Dismissal (*non constat*): If due to lack of evidence or to insufficient or conflicting evidence it has not been established with moral certainty that the offence was in fact committed, that the accused committed the offence or that the delict was committed by a person who is no imputable, then it is called dismissal.

CIC c. 1348 states that even if the person was acquitted or if no penalty can be imposed, the ecclesiastical authority may need to take some disciplinary action. There is no counterpart for this canon in CCEO. It is possible to provide for the public good or for the welfare of the person accused through appropriate warnings, penal remedies and other means of pastoral solicitude. The decision issued by sentence or by decree must refer to one of these three types, so that it is clear whether “*constat*”, “*constat de non*” or “*non constat*”.

VI. The Possible Penal Procedures

According to Canon Law three kinds of penal procedures are possible (V, n. 85):

A. A judicial Penal Procedure

B. An Extrajudicial Penal Procedure

C. The Procedure for most grave cases with a direct decision of the Roman Pontiff
Here we deal with all these three kinds of penal procedures in detail.

A. Judicial Penal Process

In order to conduct a judicial penal process, the concerned provisions of the law should be consulted either in CCEO for the Eastern Churches and CIC for the Latin Churches or in articles 8-15, 18-19, 21§ 1, 22-31 of SST. CCEO cc. 1468-1485 deal with the procedure for imposing penalties (SST art. 31, V, n.87).

Supreme Tribunal System of CDF

Competent tribunal: SST art 8 states that the Congregation for the Doctrine of the Faith is the Supreme Apostolic Tribunal for the Latin Church as well as the Eastern Catholic Churches for the judgment of the delicts we are dealing with here (SST art. 6). This tribunal is also competent to judge other delicts of the defendant accused by the Promotor of Justice. The sentences from this tribunal do not need the approval from the Roman Pontiff.

Judges: The members of the CDF are ipso iure judges of this Supreme Tribunal. The prefect of the CDF presides as first among equals over the college of the members and if the office of prefect is vacant or if the prefect himself is impeded, the secretary of the Congregation carries out his duties. It is the responsibility of the prefect of the Congregation to nominate additional stable or deputed judges (SST art. 9).

Qualities of Judges: The additional or deputed judges must be priests of mature age, possessing a doctorate in canon law, outstanding in good morals, prudence and expertise in the law. Such priests may at the same time exercise a judicial or consultative function before another dicastery of the Roman Curia (SST art. 10).

Promotor of Justice: A Promotor of Justice is to be appointed to present and sustain an accusation. He must be a priest, possessing a doctorate in canon law, outstanding in good morals, prudence and expertise in law. He is to carry out his office in all grades of judgment (SST art. 11).
Notary: priests are to be appointed as notary and chancellor. They can be officials of the CDF or other priests (SST art. 12).

Advocate or Procurator: The role of advocate or procurator is carried out by a member of the Christian faithful, possessing a doctorate in canon law. He is to be approved by the presiding judge of the college (SST art. 13). According to SST art. 13 of 21 May 2010, the role of advocate or procurator is carried out by a priest. This article is amended on 3 December 2019 by Pope Francis changing priests to Christian faithful.

In other tribunals dealing with cases under these norms, only priests can validly carry out the functions of Judge, Promotor of Justice and Notary. This article also was amended on 3 December 2019 and removed the clause ‘patron (procurator and advocate)’ which can be carried out by other Christian faithful.

CCEO c. 1087 stipulates that the eparchial judges are to be priests (§1) and they are to be unimpaired reputation and doctors or at least licensed in canon law and be known for prudence and zeal for justice (§3). The CDF may dispense from the requirements of priesthood and a doctorate in canon law for the judges (SST art. 15).

If there is violation of merely procedural laws in the acts, the CDF may validate the acts which are presented by the lower Tribunals acted by the mandate of CDF or according to SST art. 16. In this case, the right of defence is fully respected. The respective presiding judge may at the request of the Promotor of Justice, exercise the same power under the same conditions determined in the canon CCEO 1473 (SST art. 19). This canon states, “To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the hierarch, after having heard the promoter of justice and cited the...

accused, at any stage and grade of the penal trial can exclude the accused from the exercise of sacred orders, an office, a ministry, or another function, can impose or forbid residence in some place or territory, or even can prohibit public reception of the Divine Eucharist. Once the cause ceases, all these measures must be revoked and they end by the law itself when the penal trial ceases.”

The more grave delicts reserved to the Congregation for the Doctrine of the Faith are to be tried in a judicial process (SST art. 21). The prefect is to constitute a turn of three or five judges to try the case (SST art. 22). If the Promotor of Justice brings a specifically different accusation in the appellate stage, the tribunal of CDF can admit it and judge it as if in the first instance (SST art. 23). The particular importance of the question concerning the credibility of the accuser must be considered in the tribunal (SST art. 24 § 2). If an incidental question arises, the college is to decide the matter by decree most expeditiously as referred in CCEO c. 1310 n.5 (SST art. 25).

**Appeal to CDF from lower tribunals:**

The Supreme tribunal of the CDF judges in second instances (SST art. 20):

1) Cases adjudicated in first instance by lower tribunals
2) Cases decided by this same Supreme tribunal in first instance

Once an instance has been finished in any manner before another tribunal, all the acts of the case are to be transmitted ex officio to the CDF as soon as possible (SST art. 26§1). The right of the Promotor of Justice of CDF to challenge a sentence runs from the day on which the sentence of first instance is made known to the same Promotor of Justice (SST art. 26§2).

Against singular administrative acts which have been decreed or approved by CDF in cases of reserved delicts, recourse may be made within the peremptory period of sixty canonical days to the Ordinary Session of the CDF. This session will judge on the merits of the case
and lawfulness of the Decree. Any further recourse is excluded (SST art. 27). This article mentions art. 123§1 of the Apostolic Constitution *Pastor Bonus* which states that the Signatura adjudicates recourses lodged within the peremptory limit of thirty useful days against singular administrative acts whether issued by the dicasteries of the Roman Curia or approved by them, whenever it is contended that the impugned act violated some law either in the decision-making process or in the procedure used. Such recourse is excluded in the case of CDF according to SST art. 27.

*A res iudicata* occurs (SST art. 28):

i) if a sentence has been rendered in second instance;

ii) if an appeal against a sentence has not been proposed within a month;

iii) if, in the appellate grade, the instance is abated or is renounced;

iv) if the sentence has been rendered in accord with the norm of SST art. 20

*Judicial Expenses*

Judicial expenses are to be paid as the sentence has determined. If the defendant is not able to pay the expenses, they are to be paid by the Hierarch of the case (SST art. 29).

*Pontifical Secret*

Cases of this nature are subject to the pontifical secret. Whoever has violated the secret, whether deliberately or through grave negligence, and has caused some harm to the accused or to the witness, is to be punished with an appropriate penalty by the higher turn at the insistence of the injured party or even ex officio (SST art. 30).
Judicial Penal Process according to CCEO

SST article 31 states that together with the norms of *Sacramentorum Sanctitatis Tutele*, canons on delicts and penalties as well as the canons on the penal process of CCEO must be applied in the Eastern Catholic Churches. All tribunals of the Latin Church and Eastern Churches are bound by the norms of SST. The Latin Church has to observe the canons on delicts, penalties and the penal process in CIC (v, n. 87).

CCEO c. 1469§1 states that if the preliminary investigation seems sufficiently instructed, the hierarch is to decide whether a procedure for imposing penalties is to be initiated and if decided affirmatively, whether it is to be dealt with by way of a penal trial or extra-judicial decree. Here the hierarch has to consider two canons: 1403 and 1411. These canons refer to abstaining from a penal process if the offender has moved by sincere repentance, has confessed his delict to the hierarch in the external forum, appropriately provided for the reparation of the scandal and harm (1403§1). In the case reserved delicts to the CDF, it is the CDF who takes this decision (SST art. 16). Canon 1411 is about the prescription of the penal action. In the case of reserved delicts, it is after twenty years. However, the CDF has the right to derogate from prescription in individual cases (SST art. 7).

If the CDF has decided that the hierarch should proceed further in a judicial penal process, the Hierarch has to observe the canons 1471-1485 of CCEO and canons 1401-1467 of CCEO. Canons on trials in general (Title XXIV) and on the ordinary contentious trial (Title XXV) as well as special norms for cases that pertain to the public good must be applied in penal trail. According to CCEO c. 1078, in penal cases, the accused, even if absent, can be brought to trial before the tribunal of the place where the delict was committed. In the case of delicts which we deal with here, the CDF determines the tribunal (SST art. 16). According to these canons, when the Hierarch is directed to proceed further in judicial penal trial, he has to...
constitute a collegiate tribunal of three judges. Penal cases concerning delicts that entail the penalty of major excommunication, privation of office, reduction to a lower grade or deposition are reserved to a collegiate tribunal of three judges (CCEO c. 1084§1 n.3). According to SST article14, only priests can validly carry out the functions of judge, promotor of justice and notary. Before the amendment of this article on 3 December 2019, only priests can validly carry out the functions of Procurator and Advocate. With regard to the provisions of CCEO c. 1087, SST article 15 states that the CDF can dispense from the requirements of priesthood and of a doctorate in Canon Law in appointing judges. The role of Advocate or Procurator is carried out by a member of the faithful possessing a doctorate in canon law, who is approved by the presiding judge of the college.

The Hierarch has to hand over the acts of the investigation to the promotor of justice who is to present a *libellus* of accusation to the judge according to the norms of cc. 1185-1187 (CCEO 1472§1):

1) in order to bring the accused to penal trial, a person (here it is the Promotor of Justice) must present to a competent judge an introductory *libellus* of litigation that sets forth the objects of the controversy and requests the services of the judge (CCEO c. 1185).

2) The *libellus* must express to the judge what is being sought and by whom it is being sought

3) Indicate the legal basis for the petitioner’s case and, at least generally the facts and proofs that will prove the allegations. In the case of reserved delicts, there is the result of the preliminary investigation

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41 Ibid art. 2§2
4) Be signed by the petitioner indicating the date and the address of the petitioner

5) Indicate the domicile or quasi-domicile of the defendant

The presiding judge of the tribunal must call the other parties to trial. They can be given opportunity to respond in writing or appear before the judge (CCEO c. 1190). Because of the particular nature of crime dealing here, the victim or accuser and the accused are not summoned together. The presiding judge who cites the accused must invite the accused to choose an advocate within a determined time; if he did not choose, the same judge *ex officio* is to appoint an advocate for the accused. This advocate can remain in function as long as the accused does not appoint an advocate personally (CCEO c. 1474).

The accused is not bound to confess the delict nor can an oath be administered to the accused (1471§2). The accused has the right to remain silent when questioned about the alleged crime. This is an exception to the general rule of c. 1212 § 1, which obliges a party to tell the whole truth. The reason is that nobody is bound to incriminate himself. This does not prevent the accused to tell the truth from voluntarily confessing to the alleged crime. The oath either to tell the truth, or confirming the truth of what has been said, cannot be demanded of the accused.42

During the course of a penal process, whether judicial or extra-judicial, the precautionary measures referred to in nos. 58-65 can be imposed on the accused (90). CCEO c. 1473 provides for such measures.

*Oral Discussion of the Case and the Sentence*

Besides the defense briefs and observations given in writing if there have been any, there must be an oral discussion of the case (CCEO c. 1476). The Promotor of Justice, the accused and his

42 *Canon Law Letter and Spirit*, p. 959
advocate, the injured party mentioned in CCEO c. 1483§1, and that person’s advocate are present for the discussion. The tribunal can invite the experts who collaborated in the case to explain their expert testimony (1477§§1-2). In the discussion of the case, the accused, either personally or through his advocate, always has the right to speak last (CCEO c. 1478). When the discussion is completed, the tribunal is to render a sentence. If the need to gather new proofs has emerged from the discussion, the tribunal is to postpone the decision (CCEO c. 1479). The dispositive part of the sentence is to be published immediately unless the tribunal decides for a serious reason that the decision is to be kept secret until the formal intimation of the sentence, which can never be deferred beyond a month from the day when the penal case was decided (CCEO c. 1480).

The judicial penal process does not require a double conforming sentence. Therefore, a decision rendered by a sentence in an eventual second instance becomes res iudicata (cf. art. 28 SST). The only possibility to challenge such a definitive sentence is by a restitutio in integrum, if its injustice is clearly established (CCEO c. 1326) or by a complaint of nullity (CCEO c.1302ff). The Tribunal established for this kind of process is always collegiate and is composed of a minimum of three judges (V, n. 88).

Appeal

The accused can introduce an appeal against the sentence to the Supreme Tribunal of the CDF (SST art. 16). The Promotor of Justice can appeal if he judges the reparation of scandal or the restoration of justice has not been provided for sufficiently (CCEO c. 1481). Those who enjoy the right of appeal against a sentence of first instance include not only the accused party who considers himself unjustly aggrieved by the sentence, but also the Promoter of Justice of the CDF (cf. art. 26 § 2 SST).
Judicial process carried out by the CDF

We have seen above the Supreme Tribunal System of CDF. According to articles 16 and 17 of SST, a judicial penal process can be carried out within the CDF or can be entrusted to a lower tribunal. With regard to the decision rendered, a specific letter of execution is sent to all interested parties (V, n. 89). Also in the course of a penal process, whether judicial or extra-judicial, the precautionary measures referred to in Vademecum nos. 58-65 can be imposed on the accused (V, n. 90).

B. Imposition of Penalties by Extra-judicial Decree

In order to accelerate the course of justice, abbreviated formalities can be used in the judicial process without eliminating the fundamental elements of a trial as stated in CCEO c. 24. The Christian faithful can vindicate and defend the rights which they have in the Church and they have the right to be judged according to the prescripts of the law, to be applied with equity. The extra-judicial process is also called administrative process (V, n. 91). It is the competence of the CDF alone to decide in individual cases about the type of procedure. The CDF may decide it ex officio or when requested by the Hierarch (V, n. 92). With regard to the decision rendered, a specific letter of execution is sent to all interested parties.

The various possibilities of the CDF concerning the extra-judicial process (V, n. 93):

i. To carry out within the CDF
ii. To entrust to a lower instance
iii. To entrust to the Hierarch of the accused
iv. To entrust to third parties at the request of the Hierarch

Extra-judicial penal process carried out according to CCEO

Here we deal with the procedure of an extra-judicial penal process carried out according to CCEO. Though Vademecum presents the process of extra-judicial process in both Codes separately,
in order to avoid the repetitions, only the distinctive points are indicated under the heading “How is an extrajudicial penal process carried out according to the CCEO?” There are only slight differences between the Codes in this regard. Therefore, the Hierarch has to observe the guidelines given under the heading “How is an extrajudicial penal process carried out according to the CIC?” to complete the process. There can be questions concerning which Code is applicable in a particular case. For example, in the case a cleric of the Latin Church who works in the Eastern Church or clerics of an Eastern Church who are active in the Latin Church circumscriptions. In such situations, it will be necessary to clarify with CDF and follow the instructions of the CDF strictly (V, n. 94).

Appointment of the Officials

When the CDF entrusts the Hierarch the task of carrying out an extra-judicial penal process, the Hierarch must first decide whether to preside over the process personally or to name a delegate. He must appoint the Promotor of Justice. According to CIC, two assessors are to be appointed. CCEO does not require the appointment of two assessors (V, n. 132). It is also necessary to appoint a notary according to the criteria in no. 41 of Vademecum that is, a priest notary be appointed (V, n. 95). These appointments are made by decree. The officials appointed are required to take an oath to fulfil faithfully the task with which they have been entrusted and to observe secrecy. The administration of the oath must be recorded in the acts (V, n. 96).

The procedure of an extra-judicial penal process

The prescriptions in CCEO c. 1486 must be strictly followed under the pain of invalidity of the penal decree (V, n. 131). This canon states that for the validity of the decree that imposes a penalty, it is required that:

1) the accused be notified of the accusation as well as the proofs and be given the opportunity of fully exercising the right of self-defence, unless the accused neglected to appear after being cited in accord with the norm of law;
2) an oral discussion be held between the hierarch or his delegate and the accused with the promoter of justice and a notary present;

3) it be explained in the decree itself the reasons in fact and law on which the penalty is based.

Now the Hierarch or his delegate must initiate the process by a decree summoning the accused. This decree must contain the clear indication of who is being summoned, the place and time at which he must appear; the purpose for which he is being summoned, that is, to take note of the accusation and of the corresponding proofs and to exercise his right of self-defence. The text of the decree is to set forth briefly about the accusation but need not list the proofs (V, n. 97). The accused must be notified of the accusation as well as the proofs and be given the opportunity of fully exercising the right of self-defence, unless the accused neglected to appear after being cited in accord with the norm of law (CCEO c. 1486 § 1, n.1). The session for the notification of the accusation and proofs must take place with the obligatory presence of the promoter of justice and the notary (V, n. 133).

According to CCEO c. 1486 § 1, n. 2, the session of notification and consequently the presentation of the defence is to take place solely with oral arguments. The oral discussion must be held between the hierarch or his delegate and the accused in the presence of the promoter of justice and a notary. The defence can be presented also in written form (V, n. 134).

Since a penal matter is involved, it is most fitting that the accused be assisted by a procurator or advocate either of his own choice or, otherwise, appointed *ex officio*. The hierarch or his delegate must be informed of the appointment of the advocate (V, nn. 130, 139 [V, n. 98]). If the accused refuses or fails to appear, the Hierarch or his delegate may consider whether or not to issue a second summons (V, n. 99). If the accused failed or refused to appear even after warning which can be attached to the first and the second summons, the hierarch can proceed with the case despite his absence. This should be noted
in the acts of the case (V, n. 100). On the day and time of the session in which the accusations and proofs are made known, the file containing the acts of the preliminary investigation is shown to the accused and to his advocate, if the latter is present. The obligation to respect the secret of office should be made known (V, n. 101). If the case involved the sacrament of penance, particular attention should be given not to reveal the name of the victim to the accused. It can be revealed to the accused if the accuser has expressly granted his consent (SST art. 24) (V, n. 102).

The accused must be given opportunity to defend his side based on accusation and proofs (V, n. 104). However, the name of the victim is not to be revealed to the accused unless the accuser has explicitly consented to it. Of course, eventually the name of the victim is to be made known to the accused (V, n. 105). Vademecum explains the accusation and proofs given to the accused.

**Accusation:** It refers to the crime that the alleged victim or other person claims to have occurred, as this has emerged from the preliminary investigation. Setting forth the accusation means informing the accused of the crime attributed to him and any associated details, for example, the place where it occurred, the number and eventual names of the alleged victims, the circumstances (V, n. 105).

**Proofs:** These are all those materials collected during the preliminary investigation and any other materials acquired. They include (V, n. 106).

i) The record of the accusations made by the alleged victims, pertinent documents such as medical records, correspondence, photographs, proof purchase, bank records etc.

ii) The statements made by eventual witnesses and finally any expert opinions such as medical including psychiatric and psychological etc. that the person who conducted the investigation may have deemed appropriate to accept or have carried out.
Any rule of confidentiality imposed by civil law should be observed. Even if these proofs were collected prior to the process, from the moment the extrajudicial process is opened, they automatically become a part of evidence (V, n. 107). The hierarch or his delegate can ask for the collection of further proofs at any stage of the process. The accused also can request for further proofs at the defence phase and the results of his request will be presented to the accused during that phase. If there are new elements of accusation or proofs, a new session is to be conducted to present them to the accused otherwise, simply consider them as further proofs (V, n. 108).

Further Procedure

The argument for the defence can be presented in two ways (V, n. 109):

i) It can be accepted in the session with a specific statement signed by all present (the hierarch or his delegate, the accused and his advocate and notary)

ii) Through the setting of a reasonable time limit within which the defence can be presented in writing to the hierarch or his delegate

In an extra-judicial penal process also the accused is not bound to confess the delict nor can an oath be administered to the accuse (V, n. 110). For the argument for the defence, all legitimate means such as the request to hear its own witnesses or to present documents and expert opinions can be used (V, n. 111). It is up to the judge to admit these proofs according to his discretionary criteria (V, n. 112). The Hierarch must consider the credibility of those taking part in the process, especially when the sacrament of penance is involved (SST art. 24§2 [V, n. 113]). The accuser is not obliged to take part in the penal process but he has exercised his right by contributing to the formation of the accusation and the gathering of proofs. Thereafter it is the duty of the Hierarch or his delegate to carry forward the accusation (V, n. 114).
**Drawing up of the Penal Decree**

If the delict is established with certainty the hierarch or his delegate must issue a decree concluding the process and imposing the penalty, penal remedy or penance that he considers most suitable for the reparation of scandal, the reestablishment of justice and the amendment of the guilty party (V, n. 119). If the hierarch intends to impose a perpetual expiatory penalty, he must have a prior mandate from the CDF (SST art. 21§2 n. 1; V, n. 120). In imposing penalty the hierarch has to take into account CCEO cc. 1429, 1430 and 1432§§ 2-3 (V, n. 121).

It is not a sentence which is issued at the conclusion of a judicial process but a penal decree after an extrajudicial process. However, like a sentence it imposes a penalty (V, n. 122). This decree is a personal act of the hierarch or his delegate. Therefore, signature of the hierarch or his delegate is required and it is to be authenticated by the notary (V, n. 123). The penal decree must explain in summary form the principal elements of the accusation and the development of the process, the reasons for the decision in fact and law (V, n. 124; CCEO c. 1486§1 n.3). Of course the general formalities applicable to every decree must be there. *Vademecum* foresees the difficulty of the author of the decree to state the reasons in fact. He has to compare the accusation, statements of defence then arrive at a moral certainty concerning the commission or non-commission of the delict or the absence of moral certainty (V, n. 125). In drafting the decree appropriate and competent persons can be invited to assist in this regard because everyone may not possess a detailed knowledge of canon law and its terminology (V, n. 126). The notification of the entire decree is to take place as prescribed in CCEO cc. 1511 and 1520. Canon 1511 is about the moment of effect of an administrative act: that is, from the moment it is intimated. A decree has legal force when it is intimated to the one whom it is destined in the way that is safest according to the laws and conditions of places (1520§1). If there is danger of harm it can be read to the person to whom it is
destined in the presence of two witnesses or a notary according to CCEO c. 1520 §2. If the person to whom the decree is destined has refused intimation without a just cause in the estimation of the author of the decree, or refused to sign the written record of the proceedings, the decree is considered to have been intimated (1520§3; V, n. 127). An authenticated copy of the acts of the process and of the notification of the decree must be sent to the CDF (V, n. 128).

*Those things that must be considered while imposing penalties*

1) On the basis of the gravity of the delict, the Hierarch should consider whether the penalties listed in CCEO c. 1426§1 are indeed adequate for achieving the purposes of punishment as stated in CCEO c. 1401 (V, n. 135).

    a) Canon 1426§1 states that according to the ancient traditions of the Eastern Churches, penalties can be imposed that require some serious work of religion or piety or charity to be performed, such as certain prayers, a pious pilgrimage, a special fast, alms, spiritual retreats.

    b) CCEO describes the purposes of penalty as follows: God employs every means to bring back the erring sheep by applying suitable medicine to the sickness of those who have committed delicts, reproving, imploring and rebuking them with the greatest patience and teaching. Even penalties are imposed to heal the wounds caused by the delict, so that those who commit delicts are not driven to the depth of despair nor are restraints relaxed unto a dissoluteness of life and contempt of the law (CCEO c. 1401).

    c) If there is a prohibition against residence in a certain place or territory can affect only clerics or religious or members of societies of common life in the manner of religious. The order to reside in a certain place or territory can affect only clerics ascribed to an eparchy, without prejudice to the law of institutes of consecrated life (CCEO c. 1429§1). Moreover, to impose an order to reside in a certain place or territory requires the consent of the local hierarch. Otherwise, it is a question of a house designated for the penance and rehabilitation of clerics of Protection of the Minors and a Vademecum of the CDF to apply for the
several eparchies or a house of an institute of consecrated life of pontifical or patriarchal right, in which case the consent of the competent superior is required life (CCEO c. 1429 § 1).

d) Penal privations can affect only those powers, offices, ministries, functions, rights, privileges, faculties, favours, titles or insignia that are subject to the power of the authority that established them or of the hierarch who initiated the penal trial or imposed the penal precept; the same applies regarding penal transfer to another office (CCEO c. 1430 § 1).

e) Privation of the power of sacred orders is not possible, but only a prohibition against exercising all or some of its acts, in accordance with the norms of common law; likewise, privation of academic degrees is not possible (CCEO 1430 § 2).

2) According to SST art. 21 § 2 n.1, the prohibitions of CCEO c. 1402 § 2 are abrogated (V, n. 136). Perpetual expiatory penalties may only be imposed by prior mandate of the CDF. The prohibition of punishment by an extra-judicial decree in CCEO c. 1402 § 2 are: a privation of office, title, insignia or a suspension for more than one year, demotion to a lower grade, deposition or major excommunication. Here the prohibitions do not affect that means; these punishments can be imposed with the permission of the CDF.

Extra-judicial penal process carried out directly by the CDF

The extra-judicial penal process can be carried out by the CDF itself. In this case, the Congregation proceeds according to formalities prescribed in Vademecum numbers 91 and the following. If required it can request the cooperation of lower instance (V, n. 129).

The penal decree falls under the secret of office

The procedural acts and the decision fall under the secret of office (V, n. 47). All taking part in the process, in any capacity, should be constantly reminded of this (V, n. 140). The decree is to be made
known in its entirety to the accused. The notification must be made to his procurator, if he has one (V, n. 141).

C. The Procedure for most grave cases with a direct decision of the Roman Pontiff

This is the third type of process. In this process, the most grave cases are presented to the Roman Pontiff for his decision with regard to dismissal from the clerical state or deposition, together with dispensation from the law of celibacy, when it is manifestly evident that the delict was committed, after having given the guilty party the possibility of defending himself (SST art. 21§ 2 n. 2; V, n. 86).

VII. Different Possibilities after the Procedure

There are different possibilities available for those who were parties in the process depending on the type of procedure followed (V, n. 142):

1. If it was decided directly by the Roman Pontiff as stated in SST art. 21§ 2 n. 2, there is no appeal against his decision. No appeal or recourse is permitted against a sentence or decree of the Roman Pontiff (CCEO cc. 45§3, 1310 n.1; V, n. 143).

2. If it was a penal judicial process, there is the possibility of a legal challenge (V, n. 144):
   1. Complaint of nullity against the sentence
   2. Appeal
   3. Restitutio in integrum

The only tribunal of second instance for appeals is that of the CDF (SST art. 20). The appeal must be submitted within one month from the day of intimation calculated according to CCEO c. 1545§1 (SST art. 28 n.2; V, n. 146). An appeal suspends the effect on the sentence (V, n. 148). *Restitutio in Integrum* is granted against a sentence that has become *res iudicata* provided that its injustice is clearly established (CCEO c. 1326§1).

Protection of the Minors and a *Vademecum* of the CDF to apply for the
3. If it was an extra-judicial penal process, recourse can be made against the decree that concluded it within ten useful days after the decree has been intimated to the CDF (CCEO c. 1487§1; V, nn. 147 & 155). The author of the decree in this case need only await instructions or requests from the CDF, which in any case will inform him about the result of the examination of the recourse (V, n. 156). This recourse suspends the force of the decree (CCEO c. 1487§2) (V, n. 148).

Since the penalty is suspended and things return to a phase analogous to that prior to the process, precautionary measures remain in force with the same caveats and procedures mentioned in nos. 58-65 (V, n. 149).

VIII. Differences in CIC and CCEO in case of Recourse against a Penal Decree

The law provides different procedures for recourse against a penal decree, according to the two Codes (V, n. 150). According to CIC, the one who wishes to present the recourse must first seek its revocation or emendation from the author that is, the Ordinary or his delegate (CIC c. 1734). Though the *Vademecum* states that CCEO uses a simpler procedure than CIC (V, n.155), the same procedure as in CIC c. 1734 can be seen in CCEO c. 999. According to CCEO c. 999§1 before lodging a recourse, a person must seek the revocation or emendation of the decree in writing from its author within a peremptory time limit of ten days computed from the day of intimation of the decree. Therefore, the statement in *Vademecum* that the CCEO provides a simpler procedure than that of the CIC is without taking into consideration CCEO c. 999. Before giving a reply, it is best to consult with the CDF.

IX. Those things that must be kept in mind in Connection with the Procedure

1. The accused has the right to submit a petition requesting a dispensation from all the obligations connected with the clerical
state, including celibacy and from any religious vows in the case of religious. For this, the accused must write a suitable petition addressed to the Holy Father introducing himself and indicating briefly the reasons for which he seeks the dispensation. It is transmitted to CDF together with the votum of the Hierarch. The CDF will forward it to the Holy Father and if he grants the dispensation, CDF will transmit the rescript of dispensation to the Hierarch asking him to notify legitimately to the petitioner (V, n. 157).

2. There is the possibility of recourse as provided by SST art. 27 for all singular administrative acts decreed or approved by the CDF. The recourse, to be admitted, must clearly specify what is being sought and contain the reasons in law and in fact on which it is based. An advocate with a specific mandate is obligatory for the one who makes the recourse (V, n. 158).

3. The guidelines provided by the Episcopal Conference to deal with cases involved sexual abuses of the minors should be taken into account. These guidelines were written in response to the request of the CDF in 2011 (V, n. 159).

4. If the accused cleric is already deceased, no penal procedure can be initiated (V, n. 160).

5. If the accused cleric dies during the preliminary investigation, it is not possible to open a penal procedure. The Hierarch may inform the CDF of the matter (V, n. 161).

6. If the accused cleric dies during the penal process, this fact should be communicated to the CDF (V, n. 162).

7. If the accused cleric has lost his clerical state during the preliminary investigation, the Hierarch should evaluate whether it is suitable to continue the preliminary investigation. His clerical state can be lost as a result of a dispensation or a penalty imposed in another proceeding. Here the Hierarch should
consider the pastoral charity and the demands of justice with regard to the alleged victims. If the penal process has already begun, the process can in any case be brought to its conclusion, if for no other reason than to determine responsibility in the possible delict and to impose potential penalties. It should be remembered that, in the determination of a more serious delict (*delictum gravius*), what matters is that the accused was a cleric at the time of the alleged delict, not at the time of the proceeding (V, n. 163).

8. Taking into account the 6 December 2019 Instruction on the confidentiality of legal proceedings⁴³, the competent ecclesiastical authority (Ordinary or Hierarch) should inform the alleged victim and the accused, should they request it, in suitable ways about the individual phases of the proceeding, taking care not to reveal information covered by the pontifical secret or the secret of office, the divulging of which could cause harm to third parties (V, n. 164).

**Conclusion**

Jesus treated the children with special care and affection. He presented the children as the model for his disciples. We have seen the constant efforts of the Catholic Church to protect the minors and vulnerable adults from sexual abuse by the clerics. The recent popes have shown some serious concerns in protecting the minors and punishing the committer of the crime. Thus, Pope John Paul II included the crime of the child sexual abuse by a cleric in the list of grave delicts reserved to the CDF in 2001, Pope Benedict approved the revised text of the norms and ordered its promulgation in 2010, Pope Francis established the Pontifical Commission for the Protection of Children, he convoked an important meeting of the presidents of the Bishops

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Conferences and representatives of the major superiors of the religious institutes in Vatican from 21-24 February 2019 which was a milestone in the history of constant efforts of the Church to prevent the child sexual abuse and other sexual harassments in the ecclesiastical circumstances. After this meeting, a series of documents were published aiming at the prevention of the child sexual abuse by the clerics. The *Vademecum* issued by the CDF on 16 July 2020 is the latest one related to this problem. It deals with the manner of procedures in cases involved the sexual abuses of the minors by the clerics. It should be considered as guidelines or handbook for such procedures rather than new norms. It doesn’t alter the current canonical legislation. For the judicial penal process in the first instance, the Hierarch has to make use of the procedure set forth in the Code where it is clearly given in detail. The norms in Motu proprio *Sacramentorum Sanctitatis Tutela* of 2010, taking account of the revisions introduced by the *Rescripta ex Audientia* of 3 and 6 December 2019 are to be observed in the procedure. Another important motu proprio about this subject matter is *Vos Estis Lux Mundi* promulgated by Pope Francis. Of course, the praxis of the Congregation for the Doctrine of the Faith is also to be followed.

*Vademecum* clarifies the various stages of the procedure involved:

1. The Hierarch receives information of a possible delict of child sexual abuse committed by a cleric.
2. The Hierarch personally or through another suitable person makes preliminary investigation observing the norms concerning the matter.
3. If there is any obstacle for preliminary investigation, the Hierarch has to contact with the CDF
4. If the Hierarch has to wait for the results from the civil investigation, he has to consult with the CDF
5. Criminal actions against child sexual abuse cases committed by
clerics are extinguished by prescription after 20 years and it begins to run from the day on which the minor completes his 18 years of age.

6. In India, the CSA cases must be reported to the civil authorities according to POCSO Act 2012.

7. During the Preliminary Investigation the appointment of the Promotor of Justice is not foreseen.

8. During the preliminary investigation, precautionary measures can be imposed on the accused by the Hierarch.

9. After having completed the preliminary investigation, the authenticated acts of the case by a notary are to be sent to the CDF together with the _votum_ of the Hierarch or his delegate.

10. The CDF send the acknowledgement note indicating its protocol number. The CDF examines the case and decides how to proceed.

11. Three kinds of procedures are possible in such cases: judicial penal procedure, extra-judicial procedure, and direct decision of the Roman Pontiff in most grave cases.

12. Since the _Vademecum_ issues no new norms for the procedure, the Hierarch has to make use the penal procedural norms contained in CIC or CCEO and in SST.

13. A judicial penal process can be carried out within the CDF or can be entrusted to a lower tribunal.

14. The appeal against a sentence of the first instance is to be made only to the Supreme Tribunal of the CDF.

15. CDF can decide whether the extrajudicial process is carried out within the CDF or it should be entrusted to a lower tribunal or to the Hierarch of the accused or to third parties at the request of the Hierarch.
16. If the delict is established with certainty the hierarch or his delegate must issue a decree concluding the process and imposing the penalty.

17. Recourse may be made against such a decree within ten days to the CDF.

18. Most serious cases are presented to the Roman Pontiff for his decision with regard to dismissal from the clerical state or deposition together with dispensation from the obligations of celibacy. There is no appeal or recourse against the decision of the Roman Pontiff.

Vademecum thus sets out how bishops and religious superiors should investigate child sexual abuse, including the obligation to report allegations to civic authorities. This handbook recommends that its use is to be encouraged for a better administration of justice. The observance of these guidelines will help to create a standardized praxis. At the same time it doesn’t claim it is perfect and not flexible. It admits that it can be periodically updated if the norms to which it refers are modified or if the praxis of the CDF is revised.

Vademecum didn’t take into consideration CCEO c. 999§1 which is the counterpart of CIC c.1734. Both canons state that whoever intends to present recourse against an administrative decree must first seek its revocation or emendation from the author within the peremptory time limit of ten useful days from the legitimate notification of the decree. Though CCEO c. 1487§1 states that recourse against a decree that imposes a penalty can be introduced before the competent higher authority within ten useful days after the decree has been intimated, is it not legitimate for a punished cleric by a decree to seek the provisions given in CCEO c. 999§1.

This handbook doesn’t issue new laws, but effectively summarises existing laws. It is for the first time that the Vatican has published how the internal Church process for investigating and prosecuting abuse
cases works. In its constant efforts to prevent the child sexual abuse perpetrated by the clerics and to impose adequate penalties on the perpetrator, the Church is very vigilant to take effective steps. There is no doubt that the *Vademecum* will assist the persons who conduct the process in an efficient way.

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