Certain Questions which Require Clarification for a Correct Understanding of the Penal Law in CCEO

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In this study, I present some questions which I have faced in my personal research on the penal canons of CCEO.1 I have found that some of those canons are not clear from a first reading; they require a deeper study in order to understand them. I would like to share with my readers the result of my research in this area.

Some of those questions can be summarised as: can there be non-penal sanctions?; does a religious superior who is not hierarch have the competence to punish his subjects?; which is the competent forum to handle the penal trial of a religious?; is there sufficient clarity on the power of the judge and of the hierarch (that is, whether the

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hierarch can also exercise the faculties assigned to the judge like in c. 1409)?; how to understand the need of strict interpretation of penal law?; etc. There are certain questions for which I have not found an answer in the code; in those cases, I have tried to explain the difficulty without proposing an answer. Further study is needed to find their answers. In certain cases, a reference to the corresponding CIC canons, as parallel passages (c. 1499), can better clarify the norm. Such a reference can also disclose certain lacunae or ambiguity of CCEO penal canons.

Here we may clarify what we mean by canonical penal law of CCEO. The corrective measures of the Church can generally be divided into three: 1) that which is operative in the sacrament of penance, 2) that which is applied through disciplinary-pastoral field with exhortation, preaching, corrections, etc., and 3) laws on canonical delicts and penalties. When we say canonical penal law of CCEO, we intend only laws belonging to this last category, and only this category is the content of CCEO title 27.2

Penal law cannot be considered in isolation from other sections of the code such as general norms, canons on trial, etc. Thus, we have recourse to relevant canons also from outside the title on penal sanctions (title 27). In a way this is a commentary only on certain aspects of some penal law norms of CCEO; but it is not an exhaustive commentary on any canon. The scope of this article is not limited to any single aspect of penal law, but it includes various aspects, and that explains why this study does not have a thesis. I think the theme of connecting penal law with the law on religious is yet to be developed, thus, wherever I find it useful, I do so.

Administrative Sanctions

In the canonical doctrine, the term *sanction* has various meanings. It can refer “to an intervention by the competent authority or by the law, by virtue of which a confirmation [see CIC c. 578], approval or recognition [see CIC c. 207 §2] with juridical value is given, a juridical link is created, or a penalty is imposed.” All these meanings are not included within the scope of CCEO title 27, which is limited to canonical penal sanctions in the context of delicts. However, CCEO does not reject the possibility of those other sanctions conceived in the above-cited text. In fact, the addition of the term *poenalibus* to *sanctionibus* was inspired by the opinion of some experts who noted that sanctions in canon law need not always be penal. Thus, without the addition *poenalibus*, the heading of title 27 would not be precise. This fact implies that title 27 deals only with penal sanctions and there could be other sanctions which the code does not explicitly prescribe or deny. “The principle of legality in penal law in the strict sense is of importance also in as much as on the one hand it delimits offence from other illegal actions and, on the other hand, it clearly points out the difference between penalties and administrative sanctions. This again has consequences for the procedure of imposing penalties.” This statement of a consultor of PCCICOR and professor of penal law in the Faculty of Eastern Canon Law at the Pontifical Oriental Institute of Rome (thus an expert in the matter) confirms that there can be administrative sanctions, outside penal sanctions, for non-penal illegal actions. CCEO does not prohibit imposing administrative sanctions against non-penal

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4 “…le sanzioni nel diritto canonico non sempre sono penali, come p.e. avviene nelle ‘irregularitates ex delicto’ che non sono pene canoniche” (*Nuntia* 12 (1981), 78); see also *Nuntia* 4 (1977), 75.

illegal actions. Thus, when a religious superior observes the unsuitability of behaviour in a subject, that subject may be asked to live in a way which is suitable for religious life; if the subject does not comply with that instruction, the superior may punish him with an administrative sanction. Such a technically non-penal punishment does not fall under the category of canonical penalty. CIC c. 1312 §3 admits penal remedies (which are not considered penal sanctions) to prevent delicts: “Penal remedies and penances are also used; the former especially to prevent delicts, the latter to substitute for or to increase a penalty.”

We can find a somewhat similar intention in CCEO c. 1427 which admits public rebuke of the offender if that is found a suitable penalty or remedy (see a similar measure in CIC c. 1339). Administrative sanctions have a pronounced pedagogical motivation, and they do not come under the purview of penal sanctions, and thus are not governed by penal law.

Penances can be imposed as part of administrative sanctions or as corrective measures in order to avoid the danger of arriving at the situation of canonical penal sanctions. Before imposing penalties, the superiors could try with “reproving, imploring, and rebuking” (c. 1401) to correct the wrong-doers before they fall into the situation of delict and penalties. Quasi-penal measures “may help to preclude ecclesiastical delicts or address problematic, yet non-delictual disciplinary situation.” Thus, the Eastern penal law visualises penal sanctions as the last measure to be implemented in the attempts to correct the wrong-doer: “Indeed, they are even to impose penalties…” (c. 1401). Canon 1426 lists certain penalties which could be imposed

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as penances or administrative sanctions; since the list of c. 1426 is not
exhaustive,⁸ a hierarch could impose other similar penances if they are
found more suitable for the correction of the wrong-doer. For example,
instead of the penalties listed in c. 1426, a competent superior could
transfer a religious from one house to another as a corrective measure.
Another example could be the prohibition or obligation, imposed on a
religious, to stay in a place, which is not prescribed as penalty for any
individual delict (cc. 1436-1467), although its imposition as a penalty
is foreseen in the code (c. 1429). This could be imposed as a penance
or an administrative sanction in some cases. A local hierarch may
prohibit a faithful from teaching catechism or doing some other ministry
in the eparchy; and this prohibition could be imposed as an
administrative sanction. Superiors also have a duty to help their subjects
to avoid the situation of delict so that the need for imposing penal
sanctions may not arise. Penances and administrative sanctions can
be such helps which can be imposed outside the context of delict in
the technical sense (c. 1414).

Here we consider some possibilities of administrative sanctions
present in CCEO. Canon 1154 n. 2° speaks of administrative remedies
such as suspension or removal. The hierarch may apply opportune
administrative remedies, not excluding suspension from the exercise
of sacred ministry or removal from office, even if a penal action has
been extinguished by prescription. This suspension or removal is not a
penal sanction, because a penal sanction is not possible as the action
is extinguished by prescription. Traits of such administrative sanctions
can be found also in the refusal of the eucharistic communion to the
publicly unworthy (c. 712) even without penal excommunication (cc.
1431 §1, 1434 §1); this refusal can take place through administrative
decrees, and could be an administrative sanction. Similarly, if an
ecclesiastical funeral to a sinner can cause public scandal, the Church
can refuse it (c. 877). Although this refusal is not for the correction of

the dead person, it can be useful as a warning to those who are in similar sinful situations. It is a way of telling the living that the sinful acts which the dead person has committed are not acceptable to the Church. These measures can also be considered administrative sanctions, as they can communicate a message in keeping with the mission of the Church. According to c. 89 §1, the patriarch can take action against a cleric under certain circumstances. This action could be an administrative sanction if no delict is involved. Thus, we cannot say that any and every form of corrective measure in CCEO is technically penal sanction. There are corrective measures also outside the context of penal sanctions. Dismissal of a member from an institute of consecrated life is an administrative act and can be considered a non-penal measure (cc. 499-500). It can take place also if a consecrated person habitually violates serious laws even if those laws may be non-penal. But before dismissal, they may be corrected with less severe non-penal measures, which we count as administrative sanctions. The administrative procedure for extrajudicial decrees, mentioned in c. 1402 §2, is for penal sanction, and not for imposing administrative sanctions.

CCEO prescribes punishment for religious who illegitimately leave their monastery or house (ad normam iurispuniatur, cc. 495, 550). In an early phase of codification, this norm was among the penal law canons (which now is among the laws on religious in title 12). The study group for the codification of the canon on delicts and penalty

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9 Penalties can function also as deterrent to the Church community: see Nuntia 20 (1985), 7.

10 “It is the right and obligation of the patriarch to exercise vigilance according to the norm of law over all clerics; if it appears that one of them merits punishment, he is to warn the hierarch to whom the cleric is immediately subject and, if the warning is in vain, he himself is to take action against the cleric according to the norm of law” (c. 89 §1).

11 It is true that the perpetually professed dismissed religious can ask, under certain circumstances, that his case be handled judicially (c. 501 §2). But this provision is possible only after issuing the first decree of dismissal.
maintained that the transgressions of the laws governing religious life should not be considered a delict. So, even if it is considered a transgression of a law, it is not counted among delicts, because it is not a violation of a penal law; such illegal absence of religious can be punished with a penal sanction only after issuing a relevant penal prescript or penal warning. Instead, it can be punished with an administrative sanction if no delict is involved. The above-mentioned decision of the study group is a confirmation that there may be punishments for the transgression of non-penal laws, and without applying penal law.

Canon 1436 §1 lists the abandonment of the Catholic faith among delicts, and prescribes penalties for that delict (major excommunication, and, if he is a cleric, even deposition is possible). The penalties prescribed in c. 1436 §1 can be imposed only by a penal trial, and not by extrajudicial decree (c. 1402 §2). This prescription is applicable to any faithful who abandons Catholic faith. However, a religious’ public abandonment of the Catholic faith incurs automatic dismissal from his institute without any penal process (c. 497). It is to punish (excommunicate) that automatically dismissed religious that the penal law, as prescribed in c. 1436 §1, is applied. Automatic dismissal from a religious institute is not counted as a penal sanction; excommunication with penal trial may follow that automatic dismissal.

Without having recourse to the penal procedure, an officeholder can be transferred contrary to the will of the officeholder (c. 972 §2), and a person can be removed from the office (c. 974 §1), whereas privation of office can be imposed only as a penalty for a delict (c. 978). For certain offices, the appointment and removal may require the consent of specified officials or bodies (eg., appointment and removal of the eparchial finance officer – c. 262 §2). Those removals (except privation of office) can be made through administrative acts observing the prescribed procedure and without the penal procedure (cc. 972 §2 and 975 §1).
Through various canons, CCEO bears witness to the possibility of corrective measures applying administrative sanctions and without applying penal law and imposing canonical penalties in the strict sense.

Medicinal Character

The medicinal character of penalties is underlined in the Eastern code. The terms “illness” and “medicine” are metaphorically used in c. 1401.\(^\text{12}\) The understanding is that delict is a result of spiritual illness for which suitable medicines are needed for healing; and penalty is viewed as medicine. In this conception, penalties are viewed as correctives intended mainly for the reform of the offender and reparation of the scandal and harm. However, some people understand this image as intended only for the healing of the offender, ignoring the fact that the delict of a faithful can hurt also the community, which also needs healing. The first penal canon (1401) contains elements to communicate that the medicine is not only for the offender, but also for the community which is wounded. That is why it says “to heal the wounds caused by the delict” (c. 1401), including anyone who is wounded by the delict.\(^\text{13}\) It aims at healing all the wounds, both that of the offender and of others who are wounded by the delict of the offender. Nevertheless, the community cannot be punished, and its healing may take place when the offender is brought back to “health”. In understanding and interpreting the penal canons, the need of healing the community is to be duly upheld in order to be faithful to the intention of the penal canons.\(^\text{14}\)

\(^\text{12}\) Aphrahat (ca. 275-345), a father of the East Syrian Church, in his treatise 7, conceives penance as medicine, of which c. 1401 speaks, much before the council in Trullo (691-2), which council is cited as the principal source of c. 1401: see George Nedungatt, *Covenant Life, Law and Ministry according to Aphrahat* (Kanonika 26), Roma, PIO, 2018, 26, 220.


\(^\text{14}\) From the beginning of the work of the codification of CCEO, the aim of penal law was declared as healing the offender as well as the community, because community is also wounded by the delict: see *Nuntia* 12 (1981), 40 c. 1.
**Strict Interpretation**

Laws establishing a penalty are subject to strict interpretation (c. 1500). Accordingly, such laws in common law and particular law and penal precept are subject to strict interpretation. However, it is important to note that all laws in the title 27 (penal sanctions in the Church) are not subject to strict interpretation, but only those which establish a penalty. Therefore, various elements contained in those laws such as the penalty itself, the competence of the penalising authority, moral certainty about the presence of delict, etc. would be strictly interpreted. For example, if a canon says that the judge is competent to impose a penalty (c. 1409 §2), only the judge could impose that penalty, and that competence cannot be extended to the hierarch or some other superior.

** Reserved Sin and Delict**

There is the need of making a conceptual distinction between sin and delict. While almost all delicts may be sins, all sins are not delicts. For example, not helping one in need even when one has the possibility to help, is a sin but not a delict in canon law; instead, a person holding an office, ministry or function in the Church, who inspires another person to transfer to another Church commits a delict (c. 1465), but it may not always be a sin – the sin element will depend on whether he did it in good faith under certain circumstances which he found helpful for the faithful who transferred to the other Church. That is why when a penal trial is conducted a judge can consider whether the delict was committed in an extenuating circumstance or by a recidivist (cc. 1415 and 1416). In the former case, the offender may be freed or punished with a lighter penalty, and in the latter case, he may be punished with a more severe one. Similarly, a person who is punished may not be in

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sin. For example, a suspended cleric can continue to celebrate sacraments, and this norm is a sign that the code admits that he, although undergoing punishment, could possibly be in a non-sinful state. The same is true with a deposed cleric who can receive communion (if not excommunicated). That means, while the effect of delict continues, he has been absolved from the sin.

The absolution of certain sins may be reserved to the eparchial bishop or RAS (c. 728). According to CCEO, abortion was among the reserved sins until pope Francis decided otherwise.\textsuperscript{16} Now it is no more a reserved sin, that is to say, any confessor can absolve from the sin of abortion in a normal situation. However, if the abortion is proved in the external forum, the offender is still subject to ecclesiastical penalty according to c. 1450 §2. Thus, it is possible that even when one obtains absolution for a sin or violation of law, he may still be punished for the delict involved in the violation.\textsuperscript{17} This can happen also in the delicts reserved to RAS. If it is a sin of which the absolution is not reserved to authority, the confessor can give absolution, and if the violation of law is proved in the external forum the offender can be punished according to the law. The absolution of the sin of sacrilegious use of the divine eucharist is not reserved to anyone. Any confessor can absolve it. However, as a delict (c. 1442), it is reserved to CDF.\textsuperscript{18} As a sin, its absolution does not require any condition other than the ordinary conditions for any confession such as penitence, oral confession of sins to a presbyter or bishop, etc. On the contrary, c. 731 says that a person who confesses a false denunciation of an innocent confessor to the ecclesiastical authority of the crime of solicitation to


\textsuperscript{17} Frederick C. Easton, commentary on c. 1450, in John D. Faris and Jobe Abbass, eds., \textit{A Practical Commentary to the Code of Canons of the Eastern Churches}, Montréal, Wilson & Lafleur inc, 2019, vol. 2, 2589.

\textsuperscript{18} \textit{Normae de gravioribus delictis} of 21 May 2010, art. 3: AAS 102 (2010) 421-422.
sin against chastity is not to be absolved unless that person first retracts formally the denunciation and is prepared to repair damages if there are any. No such condition is required for the absolution of the sin of sacrilegious use of the divine eucharist. The one who committed the sin, specified in c. 731, will be absolved only after retracting the denunciation and in addition he may be punished according to c. 1454. Even after receiving the absolution, the offender of that delict may be punished. The code conceives reservation of absolution from certain sins as a strengthening of the awareness of the seriousness of certain delicts. This canonical provision hopes to make such reservation a deterrent to certain serious delicts. CCEO reserves the absolution of only those sins which are specifically mentioned in c. 728. CIC does not have a corresponding canon which directly reserves the absolution of sins.

The absolution of two sins is reserved to RAS, namely, to the Apostolic Penitentiary (AP). Those sins are direct violation of the sacramental seal, and absolution of an accomplice in a sin against chastity (c. 728 §1 nn. 1° and 2°). If a penitent confesses any of those sins, the confessor cannot absolve the penitent immediately; he has to postpone the absolution until he receives the faculty from AP. Thus, he may ask the penitent to return to him after a certain time (for example, a week or two) to receive the absolution. Then, the confessor should write to AP explaining the facts (without revealing the name and other details of the penitent) and requesting the faculty to absolve the sin in question. Having received the said faculty, the confessor can absolve that penitent who would return to him seeking absolution. Nonetheless, if there is an urgency which requires immediate absolution (for example, the penitent is mentally tormented to remain with his sin), the confessor can absolve the penitent at the time of the confession itself, and then write to AP explaining the facts and the reasons why he absolved

immediately, and asking to rectify the absolution. However, if the violation involving those sins is known in the external forum, it will be treated as a delict; and CDF is the competent dicastery to proceed with penal law in the case of delicts of violating the sacramental seal and absolution of an accomplice in a sin against chastity.\textsuperscript{20} Only if those delicts are known in the external forum, the case would be referred to CDF. That is to say, if that violation is not known in the external forum, the penitent will not be punished with penal law. Even if he is not punished with penal law for the violation of laws producing those sins, the absolution that he has received from his confessor (having sought the intervention of AP as mentioned above) is valid.\textsuperscript{21}

**Judge and/or Patriarch**

CIC c. 1342 §3 says “What a law or precept states about the imposition or declaration of a penalty by a judge in a trial must be applied to a superior who imposes or declares a penalty by extrajudicial decree unless it is otherwise evident or unless it concerns prescripts which pertain only to procedural matters.” Here, the term superior can mean all those who can impose a penalty by extrajudicial decree. In CCEO, there is no corresponding canon. Therefore, one may wonder whether the faculties of a judge are assigned to judge alone or are shared also by the hierarch who imposes penalty, and vice versa. This doubt is possible in some cases. For example, c. 1409 §1 assigns to the judge various faculties for using the discretionary power in imposing penalties. It is not clear from that canon whether also the hierarch who imposes a penalty by extrajudicial decree can legally use that power.

\textsuperscript{20} Normae de gravioribus delictis of 21 May 2010, art. 4 nn. 1\textdegree and 5\textdegree: AAS 102 (2010), 422-423.

\textsuperscript{21} See Krzysztof Nykiel, *Il sacramento della misericordia*, Roma, LEV, 2019, 45-48. The author is the Regent of the Apostolic Penitentiary and teaches canon law at the Pontifical Gregorian University (Rome).
Some people are of the opinion that in certain cases the faculties assigned to the judge could also be used by the hierarch when the nature of the matter permits it (as CIC c. 1342 §3 says). For example, according to these authors, in the context of c. 1409 §1, not only the judge but also the hierarch could make use of the power mentioned in that canon.\(^{22}\) Thus, for them, the hierarch, while punishing by extrajudicial decree, can also make use of the power assigned to the judge in similar cases. However, there are certain considerations which caution us from making such a conclusion. Above all, the need of subjecting laws, which establish a penalty, to strict interpretation (c. 1500) seems to prohibit the extension of the faculties of the judge to the hierarch if not explicitly authorised. Such interpretation would allow only a judge to use the faculties assigned to a judge. In addition, c. 1413 §2 refers to the power of the eparchial bishop and of the judge to decide whether the reform of the offender concerned can be better


In the application of penal law, even if the law uses prescriptive words, the judge can, according to his own conscience and prudence:

1° defer the imposition of the penalty to a more opportune time if it is foreseen that greater evils will result from an overly hasty punishment of the offender;

2° abstain from imposing a penalty or impose a lighter penalty if the offender has reformed and has provided for the reparation of the scandal and damage or if the offender has been or, it is foreseen, will be punished sufficiently by civil authority;

3° moderate the penalties within equitable limits if the offender has committed several delicts and the sum of the penalties appears excessive;

4° suspend the obligation of observing the penalty if it is the first offence of one who has been commended heretofore by an entirely upright life, provided the reparation of the scandal is not pressing. The suspended penalty ceases absolutely if the offender does not commit an offence again within the time determined by the judge; otherwise, the offender is to be punished more severely as the one guilty of both delicts unless in the interim the penal action for the first delict has been extinguished.
accomplished in another way without imposing penalty. In this case, the eparchial bishop as well as the judge have the same faculty. Obviously, the bishop would decide in the context of imposing penalty by extrajudicial decree, and the judge would decide in the context of penal trial. The norm excludes other local hierarchs (e.g., protosyncellus, syncellus, etc.) from using that faculty (c. 987). From the use of “eparchial bishop” and “judge” in c. 1413 §2, we can presume that if a canon intended to assign a certain power to a judge as well as to a hierarch, it would have stated both of them explicitly. The absence of the term “hierarch” in c. 1409 §1 makes us think that this canon excludes the hierarch, and only the judge can use the faculty mentioned in it. Considering this ambiguity, it would have been better to have in CCEO a canon similar to CIC c. 1342 §3. Canon 1402 §1 gives an exception for the coercive power of the judge and not of hierarchs, and §3 lists some hierarchs who can issue extrajudicial decree, in which list judge is not included.\textsuperscript{23} It is clear from the first draft of c. 1409 that the study group for drafting the penal canons intended from the beginning to limit the faculties of judges to judges and those of the hierarchs to hierarchs in the field of penal law.\textsuperscript{24}

Another confirmation for our observation comes from the following canons. A judge can temper the penalties established by law or precept if there are extenuating circumstances (c. 1415), and he can impose more severe penalties on a recidivist (c. 1416). Both these possibilities are part of the discretional faculties of judge; but a hierarch also could meet with the offenders whose delicts had extenuating circumstances or who are recidivists. In the context of this canon, it seems only the judge can use these discretional faculties, and a hierarch does not have those faculties. If the hierarch and the judge were included in these canons, they could have had a passive formulation as does

\textsuperscript{23} Nuntia 4 (1977), 77-78 c. 2, where it speaks explicitly about the exclusion of judge from c. 1402 §3.
\textsuperscript{24} Nuntia 4 (1977), 83 c. 17.
c. 1418 §§2-3, applying it to any authority who imposes the penalty. Moreover, the term “Episcopi” of the first draft of c. 1401 was changed into “illī” in order to include also judges and non-episcopal hierarchs among those who have the responsibility to apply suitable penalty.\textsuperscript{25} This is another confirmation that when the canon wishes to refer to the faculties of a hierarch as well as of a judge, a term which would include both of them is used. However, under certain conditions, a hierarch can abstain from imposing penalty or from a penal process (c. 1403). Making use of this power, he may avoid the process and, if he is eparchial bishop, he may impose by extrajudicial decree a less severe penalty than what is prescribed in the law. Thus, we may consider the faculties of the hierarch, according to c. 1403 §1, and of the judge, according to c. 1409 §1, having similarity in some respects.\textsuperscript{26}

The term \textit{hierarch} in penal law excludes religious superiors who do not have ordinary power of governance (cc. 984 §3, 441 §2, 511 §2). Thus, whenever a canon grants a faculty to a hierarch for imposing a penalty or its remission, a superior who does not have ordinary power of governance cannot use that faculty. They cannot even issue penal precept (because they do not have executive power, see c. 1510 §§1, 2 n. 2\textdegree) or penal warning, which only a hierarch can issue (c. 1406, 1407 §1). If it is necessary to impose penal sanctions on a member of his institute, he can bring that member to penal trial or approach the authority to whom the institute is immediately subject, so that the same authority may impose suitable penalty by extrajudicial decree or initiate a penal trial.

\textbf{Forum of Religious for Penal Trial}

For the penal trial, the canons on trials are applied: “Without prejudice to the canons of this title [title 28] and unless the nature of

\textsuperscript{25} Nuntia\textit{12} (1981), 39-40 c. 1.

\textsuperscript{26} Nuntia\textit{12} (1981), 80; Nuntia\textit{ 13} (1981), 61.
the matter precludes it, the canons on trials in general and on the ordinary contentious trial must be applied in a penal trial as well as the special norms for the cases that pertain to the public good; however, the canons on the summary contentious trial are not to be applied” (c. 1471 §1). The prescriptions on the competent tribunal are followed also in the case of a penal trial. As to the competent forum in a penal case, the general norm of c. 1078 is to be observed: “In penal cases, the accused, even if absent, can [potest] be brought to trial before the tribunal of the place where the delict was committed.” If the accused is a religious, who has domicile in a territory which is different from the place where he has committed the delict, he can be brought to the tribunal of this latter place. The tribunal of the place of delict can proceed even if the accused is absent in that place. However, the use of the modal verb potest shows that the tribunal of the place of delict is not the only tribunal which has the competence to handle the penal cases of religious. When we consider the competent forum of religious, we may keep in mind that some of them have reserved forum, which is not the eparchial tribunal.

Other tribunals (in addition to the tribunal of the place of delict) also could handle the cases of an accused religious if there is sufficient reason. Here below we present a few relevant norms. By reason of domicile or quasi-domicile of the accused religious, the tribunal of the place of that domicile or quasi-domicile may also be competent even if the delict was committed somewhere else (c. 1074). The case of a member of a religious institute, in which the superiors have power of governance, is to be brought to the tribunal determined in the typicon or statutes of the institute (c. 1069 §1). This norm is applicable to all kinds of suiiurismonasteries where the superior is a cleric (c. 441 §2), and in the clerical orders and congregations of pontifical or patriarchal right (c. 511 §2). As for other religious, in whose institutes the superiors do not have power of governance, in addition to the tribunal of the place of delict, in general, the eparchial tribunal of the place of domicile or quasi-domicile is competent to handle their penal
cases, because the eparchial tribunal is competent to judge in the first grade of the trial the cases of such religious (c. 1069 §2).\textsuperscript{27}

However, there could be some exceptions in the case of superiors. Within the territory of the patriarchal Church, the ordinary tribunal of the patriarchal Church is competent to judge the cases of the superiors of \textit{sui iuris} monasteries of pontifical right, of the superiors general of other institutes of consecrated life of pontifical right, and of other superiors (provincial and local) of the institutes of pontifical right in which the superiors do not have judicial power (c. 1063 §4 n. 4°).\textsuperscript{28} Canon 1063 §4 n. 2° establishes that the cases of physical persons immediately subject to the patriarch are judged by the ordinary tribunal of the patriarchal Church. From this we conclude that this norm is applicable also to the superiors of stauropegial monasteries and the superiors general of orders and congregations of patriarchal right.\textsuperscript{29} Thus, the cases of the superiors of \textit{sui iuris} monasteries of pontifical and stauropegial right, and of the superiors general of clerical and non-clerical institutes of pontifical and patriarchal right, within the territorial boundaries of the same Church, are reserved to the ordinary tribunal of the patriarchal Church.

The term “superiors” in c. 1063 §4 n. 4° seems to include not only the superiors general, but all superiors of the non-clerical institutes of pontifical right. Generally, when the code wants to limit something

\textsuperscript{27} TomásRincón-Pérez, commentary on CIC c. 593, in \textit{Exegetical Commentary on the Code of Canon Law}, Montreal/Chicago, Wilson & Lafleur/ Midwest Theological Forum, 2004, vol. II/2, 1535. In the case of certain superiors, as per c. 1063 §4, there are exceptions. We will deal with that in the following paragraph.

\textsuperscript{28} “This tribunal [the ordinary tribunal of the patriarchal Church] is competent to judge in first and further grades, with judges serving in rotation, the cases: ...of superiors of institutes of consecrated life of pontifical right who do not have a superior within the same institute who possesses judicial power” (c. 1063 §4 n. 4°).

\textsuperscript{29} Biju Varghese, \textit{A Study on the Penal Competence of the Supra-Episcopal Authorities}... (published extract of doctoral dissertation), Romae, PIO, 2015, 86.
to major superiors, it explicitly mentions that; when it uses the term “superiors” (without adding any restrictive term like “major”), all types of superiors are included in it. The norm establishes that the superiors of the institutes of pontifical right within which there is no superior with judicial power will be judged, within the territorial boundaries of the patriarchal Church, in the ordinary tribunal of the patriarchal Church. This will include the male and female superiors of sui iuris monasteries of pontifical right, the superiors general of clerical orders and congregations of pontifical right (because they do not have any superior within their institutes), and all superiors of non-clerical institutes of pontifical right (because in these institutes there is no superior with judicial power). If the superior of a sui iuris monastery is cleric, he could have judicial power (c. 441 §2) and the major superiors of clerical orders and congregations of pontifical and patriarchal right have judicial power (c. 511 §2). Thus, the superiors who are below the superior general of the clerical orders and congregations of pontifical and patriarchal right may be judged in the tribunal determined by their statutes (c. 1069 §1). On the basis of c. 1078, the penal case of a religious local superior of a non-clerical institute of pontifical right which is ascribed to a patriarchal Church, who is domiciled outside the boundary of the same Church, who has committed a delict when he was within the boundary of the same patriarchal Church, can be handled by the ordinary tribunal of that patriarchal Church even if he is absent from there because the delict was committed within the boundary of that Church.

Thus, within the territory of the patriarchal Churches, the ordinary tribunal of the patriarchal Church will be the competent forum to judge the cases of: a) the superiors of stauropegial monasteries, b) the superiors general of orders and congregations of patriarchal right, c) the superiors of sui iuris monasteries of pontifical right, d) the superiors general of orders and congregations of pontifical right, and e) other superiors of non-clerical institutes of pontifical right. The incompetence of the lower tribunals in the case of these superiors is absolute.
Outside the territory of a patriarchal Church, the superiors general of institutes of pontifical right will be judged in the Roman Rota. It is not usual that the principal house of an institute of patriarchal right be situated outside the territory of the patriarchal Church. Thus, in this study, we do not consider such a possibility. With due regard for c. 1063 §4 nn. 2° and 4°, members of secular institutes of any kind are judged in the eparchial tribunal because their cases are not reserved to any other tribunal (c. 1069).

According to Pastor Bonus 129 §1 n. 2°, the Roman Rota judges the cases in the first and further instances of the supreme moderators of the institutes of pontifical right. This norm is applicable also to superiors general of an institute of pontifical right ascribed to an Eastern Church, except those institutes which are ascribed to a patriarchal Church and are situated within its territory (c. 1061). Thus, the superior general of an institute of pontifical right which is ascribed to a metropolitan Church, for example, is judged in the Roman Rota.

Suspension

CIC c. 1333 §1 says that suspension can affect only clerics. CCEO does not limit suspension to clerics (c. 1432 §1). As long as such a limiting clause is not there, suspension can affect anyone who holds an office, ministry, or function. Any person (not only clerics) “who has caused serious injury to another or seriously harmed another’s good reputation with a calumny, is to be compelled to offer appropriate satisfaction; however, if the person has refused, he or she is to be punished with a minor excommunication or suspension” (c. 1452). Similarly, anyone (not only clerics) who tries to get information from confession can be punished with suspension (c. 1456 §2). Advocates and procurators (not only clerics) can be suspended (cc. 1129 §2, 1146, and 1147). A person who employs sacred objects for profane use or for an evil purpose is to be suspended (c. 1441). From none of these canons, can we deduce that suspension is reserved to clerics. It could be anyone holding an office, ministry, or function in the Church.
(for example, a lay judge, a lay financial officer, a lay sacristan). In an earlier version of c. 1432, there was the clause “suspensio clericos tantum afficere potest.” It was later removed.\textsuperscript{30} We may understand that the reason for the removal of this clause was precisely that it was not reserved to clerics. Velasio De Paolis, in his commentary on c. 1432, says that it is not limited to clerics, and that there is nothing which prevents the suspension of a lay person.\textsuperscript{31}

Canon 685 §1 n. 6\textsuperscript{o} prohibits one who is in suspension acting validly as a sponsor in baptism. Those who are in suspension cannot validly undertake the function of arbiter (c. 1172 n. 2\textsuperscript{o}). However, c. 1432 §3 says, “A suspension never affects the validity of the acts.” The reason for this norm is not clear. \textit{Nuntia}, while declaring to have adopted the principle “suspensio numquam afficit validitatem actuum”, does not give any reason for its adopting.\textsuperscript{32} This norm practically states that even if a person, who is suspended from his office, has performed a juridical act, that act will be valid. Accordingly, if a judge who is suspended from all activities pertaining to his office, judges a matrimonial case, his sentence will be valid; a suspended parish priest can validly bless a marriage; a suspended protosyncellus may validly issue precepts within the competence of his office. However, there can be ambiguities. For example, a suspended parish priest may continue to administer the temporal goods of the parish, and the juridical acts in that administration will be valid even if there are abuses and misuses. It seems that a norm similar to CIC c. 1333 §2 would have been more prudent, namely, “A law or precept can establish that a suspended person cannot place acts of governance validly after a condemnatory or declaratory sentence.” Such a norm would have made provision for particular penal law or penal precept to establish

\textsuperscript{30} \textit{Nuntia} 12 (1981), 61 c. 35.
\textsuperscript{31} See his commentary in Pio V. Pinto, ed., \textit{Commento al codice dei canoni delle Chiese orientali}, 1131.
\textsuperscript{32} \textit{Nuntia} 4 (1977), 88 c. 35.
in a specific case that the suspended person’s juridical acts would be invalid after a judicial sentence or extrajudicial decree. Without such a specific law or precept, also according to the Latin code, the juridical acts of a suspended person would only be illegal, and not invalid. CCEO does not offer such a possibility to particular penal law legislators or hierarchs who issue penal precepts. In some Orthodox Churches, suspension can affect only clerics, and the sacraments celebrated by a suspended priest are valid. But this affects only sacraments, unlike in CCEO for which other juridical acts placed by suspended person are also valid (c. 1432 §3).

Suspension can affect only the powers which are subject to the authority that establishes them or of the hierarch who initiated the penal trial or imposed the penal precept (c. 1432 §2). For example, a parish priest in an eparchy is at the same time a judge in the tribunal of another eparchy: if he is suspended only from the office of the parish priest by his eparchial bishop, he may continue the duties pertaining to his office as judge. Similarly, if he is suspended only from the office of the judge, he may continue as the parish priest in his eparchy, because these two offices depend on two different authorities.

Disobedience of one’s own Hierarch’s Orders and Prohibitions

Disobedience may become a delict. “A person who does not obey the legitimate order or prohibition of his own hierarch and who, after a warning, persists in disobedience, is to be punished as an offender with an appropriate penalty” (c. 1446). One who disobeys one’s hierarch is to be punished as an offender. Strictly, he is not an offender, but should be considered one. There are two aspects which require clarity: 1. Whether “hierarch” in c. 1446 includes also local hierarch? 2. What happens if the commanding authority is not a hierarch

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but a competent superior? In the former case, it seems that the local hierarch is also included in the canon, because local hierarch is a type of hierarch. Otherwise, the canon would have stated that explicitly. In my opinion, the term “hierarch” includes local hierarchs and other hierarchs as c. 984 §§1, 2, 3 define them. Otherwise we will have to say that local hierarchs do not belong to any category of hierarchs. The fact that local hierarchs can legitimately command religious (c. 415) and religious can be punished by them for just reasons confirm this conclusion. Thus, we can reasonably assume that the canon intends to include any hierarch who commands within the limits of his competence. Therefore, if a local hierarch gives a legitimate order or prohibition to a religious in matters in which they are subject to him (eg., c. 415), the religious is bound to obey it, and the disobedience can be punished as prescribed in the canon. Obviously, the term “hierarch” includes also the hierarchs of religious institutes, namely, the major superiors who have ordinary power of governance (c. 984 §3). Thus, disobedience of his legitimate orders and prohibitions can also incur the same penalty as prescribed in c. 1446. Also c. 1447 §1 speaks of only hierarch and not superior (anyone who incites sedition or hatred toward any hierarch or provokes his subjects to disobedience is to be punished with appropriate penalty). Thus, the canon includes all hierarchs; if the canon intended only one’s own eparchial bishop, it should have specified that. It is true that at a certain stage, the study group had mainly in mind one’s own bishop. But the promulgated canon did not maintain that idea.

A norm establishing a penalty is subject to strict interpretation. Such an interpretation should limit it to hierarch, and religious superiors who are not hierarchs are not included within the scope of this canon. A major superior of an institute in which the superiors do not have ordinary power of governance is not a hierarch (c. 984 §3), and his

34  Nuntia 12 (1981), 83 c. 45.
legitimate orders and prohibitions do not come within the purview of c. 1446. In that case, what about a disobedience of the legitimate orders and prohibitions of a religious superior who is not a hierarch? Is a disobedience of his/her legitimate orders not a delict? How to handle such disobedience? CCEO does not explicitly respond to these questions. However, a non-hierarch religious superior can urge the obedience of a law through order and prohibition using his power mentioned in cc. 441 §1 and 511 §1 (not penal warning as in c. 1406 §2 which is reserved to a hierarch), and the disobedient can be punished by administrative sanction, even by dismissal, if there is sufficient reason. The code mentions the lack of a religious spirit, which can be a scandal to others, is a sufficient cause for dismissal (c. 552 §2 n. 2°). Disobedience of legitimate orders and prohibitions given by competent religious superiors is a sign of the lack of religious spirit.

A Perpetually Professed Religious in External Sins against Chastity

“A religious who has taken a public, perpetual vow of chastity and is not in sacred orders, is to be punished with an appropriate penalty if he or she has committed these delicts” (c. 1453 §3). We may recall that there are no religious of private vows; all religious make public vows. Thus, this norm regards all religious of perpetual vow. The content of “these delicts” are given in §§ 1-2 of the canon: live in concubinage, persist in an external sin against chastity causing scandal, and attempt marriage. Any religious (of temporary or perpetual profession) is automatically dismissed if he celebrates or attempts a marriage (cc. 497 §1 n. 2°, 551). Therefore, a religious who celebrates or attempts marriage, as foreseen in c. 1453 §3 is automatically dismissed without any procedure for imposing penalty. This norm prescribes an appropriate penalty for such an automatically dismissed religious in perpetual profession. He is still bound by his vows, according to c. 502, although he is automatically dismissed, because automatic dismissal does not grant dispensation from vows. Thus, a
religious who is in the situation of c. 1453 §3, although he is outside his institute, can be punished by an appropriate penalty.

A religious who lives in concubinage or another external sin against chastity causing scandal can be punished according to the norm of c. 1453 §3. The norm of c. 1453 §3 does not prescribe punishment for those religious who, without causing scandal to the public, persists in an external sin against chastity. However, it is not against law if the competent superiors of an institute take appropriate action against such a religious, even dismissing him if needed.

Strictly interpreting the canon (c. 1500), a non-cleric member of a non-religious institute of consecrated life (e.g., society of common life) does not fall under the category of religious mentioned in c. 1453 §3. According to c. 554 §3 members of societies of common life are equivalent to religious in what pertains to canonical effects. Thus, it may seem that c. 1453 §3 is applicable also to members of societies of common life. However, given the need of strict interpretation of laws which establish a penalty, only religious should be counted as subjects of c. 1453 §3. Otherwise, the canon would have explicitly mentioned the members of such societies as does c. 1445 §2. If a member of society of common life or a secular institute lives as stated in c. 1453 §3, he may be punished after sufficient penal warning or penal precept (c. 1406 §2); he may even be dismissed if he persists in that kind of life. In non-religious institutes of consecrated life, there are no vows. A religious who marries after having obtained dispensation from vows is not punished according to c. 1453 §3.

Prohibition or Obligation for a Religious to Stay in a Place

An authority competent to impose penalty can punish a religious with the obligation or the prohibition to stay in a certain place or territory (c. 1429). Accordingly, a hierarch or a judge can make use of this provision. The relevant part of the canon says, “A prohibition against residing in a certain place or territory can affect only clerics or religious
or members of societies of common life in the manner of religious” (§1). However, an order to reside in a place can be given to a religious only if his institute’s statutes make provision for that.

According to c. 1473, “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 . . . impose or forbid residence in some place or territory . . .” on clerics or religious or members of societies of common life (c. 1429 §1). If the accused is sent to reside in a house of an institute of eparchial right, the permission of the local hierarch is required (c. 1429 §2). If he is sent to reside in a house of an institute of patriarchal or pontifical right, or a house designated for the penance and rehabilitation of clerics of several eparchies, the permission of the local hierarch is not required.

There is an element which is not clear in the norm of c. 1429 §2. The norm reads, “To impose an order to reside in a certain place or territory requires the consent of the local hierarch, unless it is a question either of a house of an institute of consecrated life of pontifical or patriarchal right, in which case the consent of the competent superior is required, or of a house designated for the penance and rehabilitation of clerics of several eparchies.” In the event of a hierarch sending, as punishment, his subject to a house of an institute of eparchial right, who requires the local hierarch’s consent: the hierarch in order to impose the penalty, or the subject in order to stay in the specified house? The answer is not clear from the formulation of the canon. It is possible that the local hierarch of the punishing hierarch and the local hierarch of the place, where the punished religious has to stay, be different. There could be two possible readings: 1. the consent of the local hierarch is needed to impose the penalty and not for staying in the specified house. This reading would mean that the competent punishing hierarch would require the consent of his local hierarch to impose on a religious the obligation to stay in a house of an institute of eparchial right in a certain place or territory; and that such a consent is
not required if the religious is to stay in a house of an institute of pontifical or patriarchal right, or in a house designated for the penance and rehabilitation of clerics of different eparchies. 2. the consent of the local hierarch of the place where the house is situated (in which the punished religious would be staying) is needed, and that the punishing hierarch does not need the consent of the local hierarch to impose this penalty. This latter reading seems to be the intention of the canon, especially when we see in the context of the whole c. 1429. This reading is confirmed by the clause “unless it is a question either of a house of an institute of consecrated life of pontifical or patriarchal right, in which case the consent of the competent superior is required, or of a house designated for the penance and rehabilitation of clerics of several eparchies.” In these two cases, no consent of any local hierarch is required; in the case of a house of an institute of pontifical or patriarchal right, the competent superior’s consent is enough, and in the case of a house of different eparchies for penance and rehabilitation of clerics, the competent authority’s consent is enough. Thus, we can reasonably conclude that the consent required in the canon (§2) is that of the local hierarch of the place where the house of the institute of eparchial right is located. The formulation of the canon seems defective.

The obligation or prohibition to stay in a place can be imposed by an administrative act of penal nature.35 According to the Latin code, the diocesan bishop has the power to explicitly prohibit the stay of a religious in his territory (CIC c. 679). Such an explicit canon in this matter is absent in CCEO. Although according to c. 1429 §1, only eparchial clerics can be obliged to stay in a particular place, it leaves freedom to the statutes of institutes of consecrated life to make similar laws applicable to their members.

Penal Precept

Canon 1406 §1 permits threatening penalties with penal precepts. For the concept of precept, see c. 1510 §2 n. 2°, namely, “singular precepts which directly and legitimately enjoin a specific person or persons to do or omit something, especially in order to urge the observance of law” (see also CIC c. 49). Any authority who has executive power of governance can issue a precept within the limits of his competence (c. 1510 §1). All those who are competent to issue a precept can also issue a penal precept. The prescription of c. 1510, regarding the competence to issue penal precept, is applicable also in the case of those who are competent to issue penal precepts (c. 1406 §1). Thus, through a singular precept, a competent authority can order or prohibit something, and attach to that precept a penalty to be applied at its violation. Such precept is called a penal precept.36 For example, a parish priest, who is not transparent in financial matters in the parish, may be asked, through a penal precept, by the local hierarch to give a receipt to all who donate money to the parish; and if the parish priest does not observe the precept, he can be punished for the violation of the norm in the precept. But with such a precept, the authority (except patriarch) cannot threaten the penalties mentioned in c. 1402 §2 (c. 1406 §1). A penal warning can serve also as a penal precept as per c. 1406 §2.

It is clear that the major superiors in religious institutes who have ordinary power of governance can threaten determined penalties by precepts, except the penalties mentioned in c. 1402 §2 (c. 1406 §1). One may wonder, however, whether the non-hierarch major superiors (who do not have ordinary power of governance) have the power to issue such precepts. According to the first draft of c. 1406 §1, only

those with power of jurisdiction could issue such precepts. At the *denuarecognitio*, the clause requiring executive power for issuing such precept was lifted, because according to the general norms, precepts could be issued by those who have executive power explicitly or implicitly. Canon 995 permits religious superiors to use their power, mentioned in cc. 441 §1 and 511 §1, in accordance with the regulations for the exercise of executive power unless common law provides otherwise or it is evident from the nature of the matter; it does not say that all religious superiors have executive power. Since they do not have that power, they cannot issue any precept in the technical sense.

**Extrajudicial Decree for Imposing Penalty**

The Eastern code requires, as a general rule, a penal trial according to cc. 1468-1482 for imposing a penalty. Only as an exception, and under clear conditions, does it permit imposing penalty by extrajudicial decree. The main aim of this provision is to avoid any arbitrariness in imposing penalty. The relevant norm says, “If, however, in the judgement of the authority mentioned in §3, there are grave causes that preclude a penal trial and the proofs concerning the delict are certain, the delict can be punished by an extra-judicial decree according to the norm of cann. 1486 and 1487, provided it does not involve a privation of office, title, insignia or a suspension for more than one year, demotion to a lower grade, deposition or major excommunication” (c. 1402 §2). If a canon prescribes any of the penalties listed here, it is obligatory to conduct a penal trial in order to impose it. Besides, it is necessary to have a penal trial or an extrajudicial decree.

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37 *Nuntia* 4 (1977), 79, c. 7 §1.
38 See *Nuntia* 13 (1981), 48-49 c. 147 for an earlier version of the present c. 1510; see also *Nuntia* 20 (1985), 18 for the reason of lifting the clause requiring explicitly the executive power for issuing such precept.
decree also in order to impose penalties prescribed in particular penal law (c. 1402).40

The extrajudicial decree imposing a penalty can be issued only by RAS, patriarch, major archbishop, eparchial bishop and major superior in an institute of consecrated life who has ordinary power of governance (c. 1402 §3). According to c. 987, whatever is attributed to an eparchial bishop in the context of executive power, is to be applicable also to an exarch. Issuing an extrajudicial decree belongs to the field of executive power. Thus, normally, an exarch also would seem included in the list of authorities competent to issue such an extrajudicial decree. Similarly, “The administrator of the eparchy has the same rights and obligations as the eparchial bishop, unless the law provides otherwise or it is evident from the nature of the matter” (c. 229). Thus, it can appear that the administrator of the eparchy could also issue such a decree. However, exarchs and eparchial administrators are among those who are excluded in c. 1402 §3. The inclusion of the major archbishop in that list confirms this conclusion. According to c. 152, “What is stated in common law concerning patriarchal Churches or patriarchs is understood to be applicable to major archiepiscopal Churches or major archbishops, unless the common law expressly provides otherwise or it is evident from the nature of the matter.” This inclusion means that if c. 1402 §3 intended to include exarchs and eparchial administrators they would have been specified in the canon, and as long as they are not specified, we cannot consider them having the competence to issue the extrajudicial decree. In the context of the necessity for strict interpretation (c. 1500), we have to strictly limit to those who are explicitly mentioned in the canon, excluding even exarch and eparchial administrator. The addition of major archbishop to the list was precisely to exclude the impression

that he is included in the term “nemoalius” which is possible because of the need of strict interpretation.\textsuperscript{41} Thus the absence of specific mention of exarch and eparchial administrator amounts to their exclusion from the list of authorities competent to issue extrajudicial decree to impose penalty.

\textit{Sui iuris} monasteries are not divided into clerical and non-clerical, unlike other religious institutes are; and the superiors of \textit{sui iuris} monasteries, if they are clerics, are also included in the category of those who can issue this extrajudicial decree, because they have power of governance (see cc. 441 §2, 979).\textsuperscript{42} In other words, the power of issuing the extrajudicial decree is not limited to the major superiors of clerical institutes. In the first schema of the present c. 1402 §3, “major superiors of monasteries and other clerical institutes” were included among those who were competent to issue the extrajudicial decree. In the schema published in \textit{Nuntia} 20 (1985), 15 c. 2, this was modified and the term “clerical” is no more there.

Under certain circumstances, a hierarch or judge can impose a penalty less severe than what is prescribed in the code. Complying with the conditions of c. 1403 §1, the hierarch could abstain from penal process and even abstain totally from imposing penalties, even if a delict carries an obligatory penalty by law. The conditions are: to hear the promoter of justice; moved by sincere repentance, the offender has confessed his delict to the hierarch in the external forum before bringing to trial; and offender or somebody else has appropriately provided for the reparation of the scandal and harm. One may wonder whether the same hierarch has the faculty to impose a less severe punishment, instead of abstaining totally from imposing penalties, under the same conditions. In other words, it seems that the canon gives the hierarch only two options: to impose the penalty as the law prescribes

\textsuperscript{41} \textit{Nuntia} 12 (1981), 82 c. 25.
\textsuperscript{42} \textit{Nuntia} 20 (1985), 14.
or to abstain totally from imposing penalty. Perhaps there could be a third option, namely, to impose a less severe penalty than the one prescribed in the law. No canon explicitly mentions this possibility as does c. 1409 §1 n. 2° which states that the judge can impose a lighter penalty if the offender has reformed and has provided for the reparation of the scandal and damage. In spite of the need for strict interpretation of the canon, we can reasonably presume that the hierarch also has that possibility, if that is more helpful for the offender himself and for the wounded community, even though that option is not mentioned in the canon. The hierarch may abstain from the penal process as indicated in c. 1403 §1 and impose a less severe penalty, by an extrajudicial decree, than the one which is prescribed in the law.

**Dispensation from Penal Law and Remission of Penalties (c. 1419 # 1)**

Dispensation from penal law is generally prohibited (c. 1537). The eparchial bishop, who is authorised to give dispensation from certain norms of common law and of particular law (c. 1538), has no power to give dispensation from penal law because of the prohibition made in c. 1537. In the context of this norm, the meaning of c. 1419 §1 may not be clear: “A person who can dispense from a penal law or exempt from a penal precept can also remit the penalty imposed by virtue of the same law or precept” (c. 1419 §1). One may ask, who are the competent authorities to dispense from penal law? Another relevant question is: does the term “penal law” in c. 1537 include also penal laws of particular law made according to c. 1405 §1?

In answering the first question, generally, the commentators hold that the legislators of penal law (or their successors in office, hierarchical superiors, and delegates) can give dispensation from the same law. “In addition to these [those specified in CIC cc. 1355-1356], the law gives the power to remit penalties to all those who can dispense from a law which is supported by a penalty. This includes the one who made the law or precept establishing a penalty, his successor in office.
and hierarchical superior.”\textsuperscript{43} The legislators of particular penal law can be the synod of bishops, the council of hierarchs, the eparchial bishop, and the major superiors of the institutes of consecrated life who have power of governance. It is necessary to read together cc. 1419 §1, 1536 §1, and 1537. “Regarding penal laws, canon 1419 §1 speaks in general of ‘the one who can dispense from penal law.’ In light of canon 1537, this must be understood as the legislator.”\textsuperscript{44} According to c. 1536 §1, a legislator himself or a higher authority can validly give dispensation from an ecclesiastical law (note that no exception to penal law is made here) in a special case for a just and reasonable cause, after taking into account the circumstances of the case and the gravity of the law from which dispensation is given. Applying this norm, we can conclude that the norm of c. 1419 §1 regarding the authority to give dispensation from penal law is to be understood as the legislators of penal law, their successors in office, their hierarchical superiors, or their delegates. Thus, a penal law made by an eparchial bishop within the boundaries of a patriarchal Church can be dispensed by the same eparchial bishop, his successor, his delegate, the patriarch, the synod, or the RAS. Canon 1537 may be understood as prohibiting an authority, who is inferior to the legislator of a penal law, to give dispensation from that penal law (c. 1537); for example, the eparchial bishop is not competent to give dispensation from the common penal law and the penal law made by the synod of bishops. The same principle can be applied in giving exemption from penal precepts.


\textsuperscript{44} John M. Huels, commentary on c. 1537, in John D. Faris and JobeAbbass, eds., \textit{A Practical Commentary to the Code of Canons of the Eastern Churches}, vol. 2, 2769.
For the second question, the answer seems to be that the term “penal law” in c. 1537 includes both common penal law as well as particular penal law.\textsuperscript{45} We can find an illustration in c. 1423 §1, according to which the synods of patriarchal and major archiepiscopal Churches can reserve the remission of penalties respectively to the patriarch and the major archbishop. The canon then adds, “No one else can validly reserve to himself or to others the remission of the penalties established by common law.” For our purpose, it is interesting to note the specification “common law” in this canon. In the light of this canon, we can assume that if a canon intended to limit the range of penal law either to common law or to particular law, it would have specified as it does in c. 1423 §1; and when it uses the term “penal law” without making any specification, it intends to include both common penal law and particular penal law. Thus, we can legitimately assume that c. 1537 intends to include common penal law and particular penal law within its scope, from which the eparchial bishop cannot give dispensation, unless it is a penal law made by the eparchial bishop himself.

**Restrictions to Impose Penalties in c. 1402 #2**

There are certain restrictions to impose the penalties listed in c. 1402 §2. Those penalties are privation of office, title, insignia, suspension for more than one year, demotion to a lower grade, deposition, and major excommunication. Canon 1402 §§2-3 prohibits hierarchs to impose those penalties by extrajudicial decrees, and c. 1409 §2 prohibits judges to impose them when the norm prescribes an indeterminate penalty. Although the patriarch can threaten those penalties through a penal precept (c. 1406 §1), in order to impose them, a penal trial is to be made; thus, the patriarch also cannot impose them by extrajudicial decree. Here we may recall that laws which prescribe a penalty are subject to strict interpretation (c. 1500). Local

\textsuperscript{45} Nuntia 20 (1985), 18 c. 5.
hierarchs other than eparchial bishops cannot impose any penalty by extrajudicial decrees (c. 1402 §3). Thus, the penalties listed in c. 1402 §2 can be imposed only by a penal trial and only for delicts for which they are prescribed (with due regard for c. 1416 which authorises the judge to consider imposing even the penalties listed in c. 1402 §2 if there is an aggravating circumstance).

**Conclusion**

This article is an attempt to understand certain penal law canons which appear to be unclear at the first sight. We consider those canons thematically and often explain them with the help of certain canons from other sections (outside title 27) of the code. For this purpose, we try to explain the meaning of those canons in the penal law context. At times we succeed in finding a solution to the problem of ambiguity in certain canons and other times we do not succeed. We may find the method followed in this study useful to have better clarity on canonical penal law in general. A special attempt is made to understand the penal law canons in the light of the canons on religious.

In the light of the study in this article, it seems that it is possible to impose administrative sanctions, outside the penal law context, on wrong-doers which intend to help them to avoid delicts; in the penal law context, a hierarch cannot use the powers granted to a judge and vice-versa; the competent forum to handle the trials of religious is normally the eparchial tribunal, except in the cases in which the code makes other provisions for the trials of certain religious; unlike in CIC, according to which suspension affects only clerics, in CCEO, suspension can affect any faithful holding any office, ministry or function; the norm that the juridical acts of a suspended official are valid could create practical difficulties; one who disobeys the legitimate commands of one’s own hierarch could incur penalty for that disobedience; religious who celebrate or attempt marriage are automatically dismissed (c. 497 §1 n. 2°, 551), thus, the prescription of c. 1453 §3 is applicable even to those automatically dismissed religious; religious and clerics
could be obliged or prohibited to stay in certain places; the major superiors with power of governance can issue penal precept within the limits of their competence; although ordinarily exarchs and eparchial administrators have the power of the eparchial bishop, they cannot validly impose penalties by extrajudicial decrees; a superior of a *sui iuris* monastery, if cleric possessing ordinary power of governance, can impose penalties by extrajudicial decree; respecting the conditions given in c. 1403 §1, a hierarch may impose a lighter penalty than what is prescribed by the canon concerned; the legislators of penal law, their successors in office, their hierarchical superiors, or delegates can dispense from penal law; when a canon uses the term “penal law” without any other specification, it intends both common penal law and particular penal law; the penalties listed in c. 1402 §2 can be imposed only by penal trial and for delicts which explicitly prescribe those penalties. We have explained only those aspects which we found unclear at the first sight.