

FINANCIAL SUPPORT OF ACCUSED CLERICS OF SEXUAL ABUSES OF MINORS. AN OUTLINE

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Abstract. The right to a decent remuneration is one of the fundamental rights of every human being. This right may not be denied to clerics, including those accused of sexual abuses of minors. *Ratio legis* of such a state, apart from a number of theological and legal motives, should be noticed in the priest's ministry itself, and even in his readiness to perform this service. Therefore, at every stage of disciplinary or penal proceedings, the accused cleric must be provided with dignified and just support.

Keywords: accused cleric, sexual misconduct, remuneration, sustenance, financing of the Church, can. 281

INTRODUCTION

The Church – as a community of Christ's faithful – cares for the salvation of every human being and for the common good of the community in which it undertakes its mission. Among the important tasks that have been set before the Church, one should recognize the protection of the common good of the faithful, including the protection of children and young people of sexual abuses. An objective and comprehensive response to cases of possible sexual abuses of minors perpetrated by clerics is therefore necessary for the Church to be able to – in an authentic and credible manner – pursue its proper purposes, above all, the order of divine worship, care for the decent support of the clergy and other ministers, and the exercise of works of the sacred apostolate and of charity, especially toward the needy (can. 1254 § 2; cf. can. 222 § 1).¹

In order to adequately protect minors from sexual misconduct, only recently the legislator has clarified the procedure to be followed in these cases: Circular Letter to Assist Episcopal Conferences in Developing Guidelines

¹ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1–317 [hereinafter: CIC/83].

for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics,² Apostolic Letter Issued Motu Proprio by the Supreme Pontiff Francis *As a Loving Mother*³ and Apostolic Letter Issued Motu Proprio by the Supreme Pontiff Francis *Vos estis lux mundi*.⁴ Moreover, the Congregation for the Doctrine of the Faith has issued a *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*, the purpose of which is to provide “instructions” to the correct handling of cases involving accused clerics of child abuse.⁵

In a situation of suspicion of sexual abuse of a minor against a cleric, the most important task of the Church is to clarify each case and provide protection and assistance to the victim, and the accused, the right to fair defence. Regarding the last point, it should be emphasized that the accused cleric is presumed innocent until the contrary is proven. Nonetheless the bishop is always able to limit the exercise of the cleric’s ministry until the accusations are clarified (*Linee guida*, I, d, 3; cf. can. 1722). Such action, otherwise understandable and right, may initiate difficulties in the financial support of the cleric. This article is a contribution to the broad and – due to the nature of the accusations – very delicate matter of supporting accused clerics of sexual abuses of minors.

1. THE RIGHT TO A DECENT STANDARD OF LIVING

The inherent and inalienable dignity of every human being is the source of his freedoms and rights.⁶ Among the fundamental rights that every human

² Congregazione per la Dottrina della Fede, *Lettera circolare per aiutare le Conferenze Episcopali nel preparare Linee guida per il trattamento dei casi di abuso sessuale nei confronti di minori da parte di chierici* (03.05.2011), AAS 103 (2011), p. 406–12 [hereinafter: *Linee guida*].

³ Francesco, *Lettera apostolica in forma di «motu proprio» del sommo pontefice Francesco “Come una madre amorevole”* (04.06.2016), AAS 108 (2016), p. 715–17.

⁴ Francesco, *Lettera apostolica in forma di «motu proprio» del sommo pontefice Francesco “Vos estis lux mundi”* (07.05.2019), “Communicationes” 51 (2019), p. 23–33.

⁵ Congregazione per la Dottrina della Fede, *Vademecum su alcuni punti di procedura nel trattamento dei casi di abuso sessuale di minori commessi da chierici* (16.07.2020), https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20200716_vademecum-casi-abuso_en.html [accessed: 16.12.2020] [hereinafter: *Vademecum*].

⁶ “Permit me to enumerate some of the most important human rights that are universally recognized: the right to life, liberty and security of person; the right to food, clothing, housing, sufficient health care, rest and leisure; the right to freedom of expression, education and culture; the right to freedom of thought, conscience and religion, and the right to manifest one’s religion either individually or in community, in public or in private; the right to choose a state of life, to found a family and to enjoy all conditions necessary for family life; the right to property and work, to adequate working conditions and a just wage; the right of assembly and association; the right to freedom of movement, to internal and external migration; the right to nationality and residence; the right to political participation and the right to participate in the free choice of

being is entitled to by virtue of his humanity is the right to a decent standard of living, regardless of gender, race, religion, social or national origin. Pope John XXIII, in his Encyclical on Establishing Universal Peace in Truth, Justice, Charity, and Liberty *Pacem in terris* clearly noted: “Man has the right [...] to the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, rest, and, finally, the necessary social services. In consequence, he has the right to be looked after in the event of ill health; disability stemming from his work; widowhood; old age; enforced unemployment; or whenever through no fault of his own he is deprived of the means of livelihood” (no. 11).⁷ This thought was continued by Pope Paul VI, who emphasized that every man has the right to work and a just wage that could provide him with “a worthy life on the material, social, cultural and spiritual level.”⁸ A fair wage should therefore provide the worker with the necessary livelihoods, which should be interpreted not as a minimum of these resources, but as a safeguard for a “truly human” standard of living, corresponding to the dignity of the human person. Thus, such an approach excludes the possibility of treating remuneration for work in terms of payment for the “goods” provided by the employee [Wratny 2015, 301].

Undoubtedly, the analysed right also applies to clergy. The legislator confirmed this in the 1983 Code of Canon Law and in post-conciliar normative acts: *Ecclesiae Sanctae*,⁹ *Ecclesiae imago*,¹⁰ *Apostolorum successores*¹¹ and in

the political system of the people to which one belongs. All these human rights taken together are in keeping with the substance of the dignity of the human being, understood in his entirety, not as reduced to one dimension only. These rights concern the satisfaction of man’s essential needs, the exercise of his freedoms, and his relationship with others; but always and everywhere they concern man, they concern man’s full human dimension.” Ioannes Paulus PP. II, *Palatium deinde adiit Nationum Unitarum; in quod ingressus, allocutionem habuit ad earundem Nationum Legatos* [Apostolic Journey to the United States of America Address of His Holiness John Paul II to the 34th General Assembly of the United Nations] (02.10.1979), AAS 71 (1979), p. 1144–160, no. 13.

⁷ Cf. Paulus PP. VI, *A Beatissimo Patre habita Genavae, in Aedibus Nationum, ad Delegatos e variis Civitatibus, qui Coetui interfuerunt quinquagesimo anno volvente a condito Instituto quem v. «Organisation Internationale du Travail» appellant* (10.06.1969), AAS 61 (1969), p. 491–502, no. 8; Sacrosanctum Concilium Oecumenicum Vaticanum II, *Constitutio pastoralis de Ecclesia in mundo huius temporis Gaudium et spes* (07.12.1965), AAS 58 (1966), p. 1025–115 [hereinafter: GS], no. 26.

⁸ Paulus PP. VI, *Epistula apostolica ad E. mum P.D. Mauricium S.R.E. Cardinalem Roy, Consilii de Laicis atque Pontificiae Commissionis Studiosorum a «Iustitia et pace» praesidem: octogesimo expleto anno ab editis Litteris Encyclicis e verbis appellatis «Rerum Novarum» Octogésima adveniens* (14.05.1971), AAS 63 (1971), p. 401–41, no. 14; cf. GS 67.

⁹ Idem, *Litterae apostolicae motu proprio datae Ecclesiae Sanctae. Normae de quaedam exsequenda SS. Concilii Vaticani II decreta statuuntur* (06.08.1966), AAS 58 (1966), p. 757–87.

¹⁰ *Sacra Congregatio pro Episcopis, Directorium de pastorali ministerio Episcoporum Ecclesiae imago* (22.03.1973), Typis Polyglottis Vaticanis, Romae 1973.

¹¹ *Congregazione per i Vescovi, Directorio per il minister pastorale dei vescovi Apostolorum successores* (22.02.2004), Libreria Editrice Vaticana, Città del Vaticano 2004.

the *Directory on the Ministry and Life of Priests*.¹² The 1983 Code of Canon Law contains numerous dispositions relating to the problem of the financial support of clergy [Lewandowski 2017, 132–38; Idem 2019a, 38–44]. A serious obligation to provide clerics with decent support and social security, in accordance with the provisions of law, rests on the Christ’s faithful (can. 222 § 1; 1261 § 1) and the diocesan bishop (can. 384; 538 § 3) due to the incardination of a cleric or his temporary fulfilment service to a particular Church.

2. THE CLERIC’S ENTITLEMENT TO REMUNERATION

Apart from a number of theological and legal motives, concerning the right of clergy to decent support [Idem 2019a, 50–94; Idem 2019b, 155–67], it is necessary to refer to can. 281 § 1, in which the legislator indicates: “Since clerics dedicate themselves to ecclesiastical ministry, they deserve remuneration which is consistent with their condition, taking into account the nature of their function and the conditions of places and times, and by which they can provide for the necessities of their life as well as for the equitable payment of those whose services they need.” In this analysis, it is therefore important to determine whether the remuneration of a cleric referred to in the cited canon results only from the motive of work performed during active priestly service (holding an ecclesiastical office) or, much more broadly, from the very motive of being a cleric, regardless of whether the cleric is actively involved in the priestly service (the ecclesiastical office is held) or, as in the case of accusations of sexual offenses of minors, the performance of the priestly ministry by the accused cleric while waiting for a full clarification of the accusations made is preventively limited.

In response to the above doubt, one should focus on the formula of the legislator *cum ministerio ecclesiastico se dedicant, remunerationem merentur* (can. 281 § 1), which used the syntax: *cum causativum + coniunctivus*. The relationship between service in the Church and wages is included here as cause and effect. Can. 141 § 1 of the 1977 Schema relating to the Book II *De Populo Dei*¹³ was reintroduced unchanged as can. 255 of the 1980 Schema of the Code of Canon Law.¹⁴ In view of the canon thus formulated, a reservation

¹² Congregazione per il Clero, *Direttorio per il ministero e la vita dei presbiteri* (11.02.2013), Libreria Editrice Vaticana, Città del Vaticano 2013.

¹³ “Clerici, cum ministerio ecclesiastico se dedicant, remunerationem merentur suae conditioni congruam, ratione habita tum ipsius muneris naturae tum locorum temporumque conditionum, quaque possint necessitatibus vitae suae necnon aequae retributione eorum quorum servitio egent providere.” Pontificia Commissio Codici Iuris Canonici Recognoscendo, Schema Canonum Libri II *De Populo Dei* (15.11.1977), Typis Polyglottis Vaticanis, [Civitas Vaticana] 1977, p. 66.

¹⁴ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema Codicis Iuris Canonici iuxta animadversiones S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Cu-*

was made by Card. Joseph L. Bernardin, who called for a closer adaptation of the Code disposition to the teaching of the Fathers of the Second Vatican Council (cf. PO 20). The Archbishop of Cincinnati argued that the fundamental rationale for the remuneration of clergy is service to God and the Church, and this truth is weakened by the concept of *ministerium ecclesiasticum*. The negative response of the Pontifical Commission for the Revision of the Code of Canon Law confirms the deeper meaning of the analysed concept [Walencik 2007, 197].¹⁵ Can. 255 of the 1980 Schema of the Code of Canon Law became the basis for can. 284 of the 1982 Schema of the Code of Canon Law,¹⁶ in which several amendments were made, including changed from *coniunctivus* to *indicativus*. For this reason, *cum* in the paragraph under analysis should be interpreted in a temporal rather than a causal sense. Even in a temporal sense, however, it can be understood in many ways: as indicating an exclusively temporal relation, as explanatory, as iterative, or even as conditional. In such an array of possibilities, *cum* should be understood as *cum coincidens*, i.e. that the relationship between the ministry of the cleric and his support remains in a temporal and material relationship. What is more, service and remuneration are connected with each other in such a way that both planes correspond and complement each other [Lynch 2000, 368; Donlon 2005, 97; Walencik 2007, 199].

Moreover, it is necessary to ask what does the cleric do when devoting himself to the ecclesiastical ministry? The answer depends on understanding *dedico*, *-are*, *-avi*, *-atum*. Is the action expressed by *dedico*, *dedicare* actionable or ontological? The basic meaning of the verb under analysis in Latin is ontological, not actionable. It is about being a cleric, that is, who he is, not what he does. A cleric deserves support when he devotes himself to the ecclesiastical ministry, i.e. from the moment of the sacrament of Holy Orders,

riae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutum vitae consecratae recognitum (Patribus Commissionis reservatum) (29.06.1980), Libreria Editrice Vaticana, Città del Vaticano 1980, p. 57–58.

¹⁵ “Ad can. 255: 1. Ita incipiat § 1, iuxta Decr. «Presbyterorum Ordinis», n. 20: «Servitio Dei dediti in implendo sibi commisso, clerici aequam remunerationem...», quia fundamentalis ratio remunerationis in servitio Dei et Ecclesiae consistit (Exc. Bernardin). R. Additio non videtur necessaria, quia sufficient verba canonis «ministerium ecclesiastico» et quia non omnes legis rationes in eadem exprimi debent.” Eadem, *Relatio complectens synthesim animadversionum ab Em.mis atque Exc.mis Patribus Commissionis ad novissimum schema Codicis Iuris Canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis (Patribus Commissionis stricto reservata)* (16.07.1981), Typis Polyglottis Vaticanis, [Civitas Vaticana] 1981, p. 67.

¹⁶ Eadem, *Codex Iuris Canonici. Schema novissimum post consultationem S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutum vitae consecratae recognitum, iuxta placita Patrum Commissionis deinde emendatum atque Summo Pontifici praesentatum* (25.03.1982), Typis Polyglottis Vaticanis, [Civitas Vaticana] 1982, p. 49. This canon entered the CIC/83 unchanged as can. 281 § 1.

because of who he has become, what he is, not because of what he has been doing since then [Lagges 2009, 162; Woestman 2006, 191–92]. On this basis, due to the constant ontological readiness to undertake the priestly service, also during the removal from duties arising from the office, there is no reason for accused clerics of sexual crimes of minors to be denied the right to a dignified and just support.

3. DETERMINING THE LEVEL OF SUPPORT

When analysing the financial support of accused clerics of sexual crimes of minors, which is a very sensitive issue due to the nature of the accusations, one should first of all distinguish between the clergy's support and the salary given to the laity. The subsistence to be provided to a cleric is not calculated according to the criteria of an exchange justice based on reciprocity and proportionality in relation to the work performed. The motive, then, is not the amount of services rendered, which should be recognized and proportionally compensated, but the cleric himself who offers his ministry for reasons other than those which guide the lay worker.¹⁷ This means that a particular Church is not obliged to pay a cleric's salary, but must guarantee him support, which should be independent of the task assigned to the cleric [Lewandowski 2019a, 45–46]. The level of remuneration due to clergy in a specific scope was set by the Fathers of the Second Vatican Council: "The remuneration received by each one, in accord with his office and the conditions of time and place, should be fundamentally the same for all in the same circumstances and befitting his station. Moreover, those who have dedicated themselves to the service of the priesthood, by reason of the remuneration they receive, should not only be able to honourably provide for themselves but also themselves be provided with some means of helping the needy. For the ministry to the poor has always been held in great honour in the Church from its beginnings. Furthermore, this remuneration should be such that it will permit priests each year to take a suitable and sufficient vacation, something which indeed the bishops should see that their priests are able to have" (PO 20). In summary, it can be stated that decent support should include, what from a moral point of view, is necessary for a cleric to properly pursue a priestly vocation: board, housing, clothes, health care, social security, annual holidays (can. 283 § 2), helping parents

¹⁷ Pontificium Consilium de Legum Textibus, *Decretum de recursu super congruentia inter legem particularem et normam codicalem* (29.04.2000), "Communicationes" 32 (2000), p. 162–67, no. 4.2. Cf. Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema Codicis Iuris Canonici* (16.07.1981), "Communicationes" 14 (1982), p. 172. See: Miñambres 2001, 536–44; Fiorita 2003.

or the closest family members,¹⁸ remuneration of those who provide help or further intellectual development (can. 279 § 1) [Idem 2017, 141–42].

However, with regard to accused clerics of sexual crimes of minors, the specific situation in which they found themselves must be taken into account. In this matter, the legislator states: “[...] during the course of the disciplinary or penal process the accused cleric should always be afforded a just and fit sustenance” [*Linee guida*, III, h]. Interesting considerations are made by James I. Donlon, who, for the purposes of practical presentation of the question, distinguished five situations: 1) Cleric accused, restricted but allegation not proven; 2) Cleric accused, allegation deemed credible; 3) Cleric accused and admits guilt; 4) Cleric accused, tried and convicted, dismissed from clerical state; 5) Cleric accused, tried, acquitted, restricted nonetheless [Donlon 2005, 105–12]. Each of the indicated options puts the cleric in a different moral and penal situation, and therefore may affect the level of the due remuneration: from the full extent of justice to the one offered as an act of love and mercy (cf. can. 1350 § 2). However, due to the nature of clerical accusations, the need to act in a transparent manner in the Church community, and the social perception of such situations, it is necessary to appeal for a very deliberate action in the analysed matter. In this regard, the legislator’s disposition, in which he calls on clerics to foster simplicity of life and are to refrain from all things that have a semblance of vanity (can. 282 § 1), should be considered a good sign. In the event of an accused cleric of a sexual offense, it would be frivolous and unfounded to display the right to an annual vacation or to emphasize the need for further intellectual development. On the other hand, the need to provide psychological and legal assistance to the accused cleric should certainly be included in the area of decent and just maintenance.

CONCLUSION

The analysis of the issues raised allows to draw conclusions *de lege lata* and *de lege ferenda*:

1. Already at the time of the preliminary canonical investigation in the case of a clerical accusation of a sexual offense of a minor the ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or

¹⁸ “Spetta ad essi una remunerazione proporzionata ai compiti svolti e tale da assicurare un decoroso sostentamento e consentire l’adempimento dei doveri del proprio stato, comprese anche quelle responsabilità che in certi casi possono avere di venire in aiuto ai propri genitori o ad altri familiari a loro carico.” Ioannes Paulus PP. II, Epistula *La Sede Apostolica* (20.11.1982), AAS 75 (1983), pars I, p. 122.

territory, or even can prohibit public participation in the Most Holy Eucharist (can. 1722).

2. An accused cleric of a sexual offense of a minor should be provided with a dignified and just living. Due to the delicacy of the problem and social perception, it seems to be better to each and every time normalize the analysed clerical entitlement in a singular decree.

3. The support should secure the basic needs of the cleric which are the same for all – board, housing, clothes, health care, social security; and special needs due to the situation of the accused – access to psychological and legal assistance.

4. Depending on the Church’s financing system, remuneration may constitute a proper salary or pension of a state or diocesan nature, or it may be based on voluntary offerings of the faithful.

5. In the analysed matter, the possibility of subsidizing the institution for the support or social security of clergy should be considered.

6. An accused cleric of sexual abuses of minors should be released from tax obligations towards the particular Church (e.g. for the diocesan curia, the seminary, etc.).

7. The spiritual and material help provided to the accused cleric by priests, in particular priests from the year of studies or vicariate forane cannot be overestimated.

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