

Prescription: a Major Issue in Dealing with Sexual Abuse Cases

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In most secular jurisdictions there is no prescription or statute of limitations and a person can be prosecuted for an offence no matter how long ago it took place. For criminal cases "a statute of limitation is an act of grace, a surrendering of a right to prosecute."¹ Practically speaking no criminal charges can be laid unless they are brought within a specified period of time after the alleged crime was committed. For example, Father Fernando Karadima was convicted by the Congregation for the Doctrine of the Faith in 2011 of abusing minors and sentenced to a life of prayer and penance. However, he has not been sentenced by the civil courts because of Chile's statute of limitations.²

The institution of prescription is different to the statute of limitations of common law,³ but because of their similarity they are often confused with each another. Prescription "is a legal method of extinguishing an action... If the libellus is not presented before the terms of prescription expire, the criminal action is extinguished."⁴

It is important to distinguish between prescription and statute of limitations. Brian Austin explains:

In the first place, the canonical institute of prescription must be clearly distinguished from the civil law known in the U.S. as a "statute of limitation." While they bear a certain resemblance to one another, they cannot be simply equated. Specifically, they differ as to the effect they have upon criminal action. In US civil law, "A statute of limitation is regarded as barring, or running against, the remedy to which it applies, and not as extinguishing, or even impairing, the right, obligation or cause of action." Therefore, after the time limit of a statute has expired, the 'civil action itself exists and continues independently of that statute', the US statute does not extinguish it. But this is precisely what the canonical

institute of prescription does – it extinguishes the action, whether contentious (civil) or criminal: 'an action is extinguished by prescription' (canon 1492 §1); 'a criminal action is extinguished by prescription' (canon 1362 §1). That is to say, 'when the time period of prescription has run and reached its terminus, the very cause of action itself is extinguished. It no longer exists.'⁵

Prescription extinguishes a criminal action to impose or declare a penalty after the prescription time expires. This means the cause of a criminal action no longer exists. Prescription in canon law allows for the acquiring of rights and the freeing from obligations with the passage of time and under certain conditions.⁶ The legislator distinguishes prescription of the penal action (canon 1362) from the penal action itself (canon 1363).⁷ The institute of prescription is not just a procedural law matter but "is in fact a matter of substantive law."⁸

Justification for Prescription

Prescription of criminal and penal action is usually justified because with the passage of time often there is a weakening of the proofs and the loss of witnesses. The reliability of the memory of witnesses can be questioned. Also, some people have argued, perhaps rather optimistically, that with the passage of time offenders may well have reformed.⁹

Wernz and Vidal promoted a double reason to justify the institution of criminal prescription. They argued that because of the passage of time, peoples' memory of the crime faded. For this reason, the harm caused by the crime was reduced, so there was not the same need for criminal and penal action. Also, they argued that, in many cases, claims concerning the Church and the prosecution of a criminal long after the commission of the crime would involve new scandal and astonishment.¹⁰

⁵ Brian T. Austin, "Due Process of Law and the USCCB Essential Norms, *Studia Canonica*, 51 (2017), 70-71: (Austin, "Due Process of Law").

⁶ Valere Nkouaya Mbandji, "La Prescription Canonique et les delicts commis par les Clercs," Paper to the Canadian Canon Law Society 52nd Annual Convention 2017: (Mbandji "La Prescription Canonique").

⁷ Ibid.

⁸ Austin, "Due Process of Law", 66.

⁹ Mbandji, "La Prescription Canonique"; Austin "Due Process of Law" 70-71.

¹⁰ Mbandji, "La Prescription Canonique"; F.X. Wernz and P. Vidal, *Ius Canonicum*, vol. 6, De Processibus, (Rome, Apud aedes Universitatis Gregorianae, 1927) 315-316: "The foundation of prescription of the criminal action, especially the reason is placed: a) in it the lapse of time the memory of the crime reduces more and more, and with it the condemnation of society that the criminal and penal action intended to address; with the result that in the Church in many cases, the taking of criminal action after a long period of time induces scandal and wonderment; b) another reason is that after a long period of time the proof of the crime and the defence of the accused are presented with a significant difficulty; as well as the public authority has the danger of condemning and innocent man, because the passage of time removes significant proofs."

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¹ Henry Black, *Black's Law Dictionary*, (St. Paul, Minnesota, West Publishing Co., 1983, 477.

² Pope Francis begins meetings with Chilean clerical abuse victims, June 2, 2018, <https://www.catholicnewsagency.com/news/pope-francis-begins-meetings-with-chilean-clerical-abuse-victims-79074>.

³ Cf. DAVID CITO, "La Perdida del estado clerical ex officio ante las actuales urgencias pastorales," *Ius Canonicum*, 51(2011), 225-226.

⁴ A. Borrás, Commentary on canon 1362, in A. Marzoa, J. Miras and R. Rodríguez-Ocana, *Exegetical Commentary on the Code of Canon Law*, vol. IV/I, Montreal: Wilson & Lafleur, 2004, 425.

There is no doubt that long after a crime has been committed, on the one hand proof of the offence has reduced, while on the other hand there are significant, inherent difficulties in defending the accused. Boccafolo argues "the passage of time often makes it difficult to prove or defend against certain charges, because of a person's loss of an exact memory of the events, or because of the death of witnesses."¹¹ Consequently, there is a grave danger that an innocent person might be condemned, merely because with the passage of time essential proofs of his innocence no longer exist.

Thomas Green elaborates on this:

The evidence may become too stale if too long a times lags between the commission of an alleged delict and its formal prosecution. Furthermore, the legal security of the accused is unduly jeopardized if church authorities do not pursue potential criminal actions with reasonable expeditiousness.¹²

The pros and cons of prescription are summarized very well by John Beal, who identifies the complications of delayed prosecutions while acknowledging the seriousness of the crime of sexual abuse:

It can be argued of course, that sexual abuse of minors is such a heinous crime that a mere legal technicality should not stand in the way of prosecuting the offence and seeing that justice is done for victims. But the prescription of penal action or a statute of limitations exists because the law, in its wisdom, recognizes that the passage of time renders prosecution of and defence against complaints increasingly difficult. With the passage of time, potential witnesses disappear, memories dim, relevant documents are lost or inadvertently destroyed, alleged crime scenes are razed or renovated. Given the high burden of proof already placed on priests who are subjects of 'credible' accusations of sexual abuse, the elimination of any statute of limitations can raise a nearly insurmountable obstacle to an effective defence.¹³

¹¹ Kenneth Boccafolo, "The Special Penal Norms of the United States and Their Application," in *The Penal Process and the Protection of Rights in Canon Law – Proceedings of a Conference held at the Pontifical University of the Holy Cross Rome, March 25-26, 2004*, ed. Patricia Dugan, Montreal: Wilson & Lafleur, 2005), 269-270.

¹² Thomas Green, "Delicts and Penalties in General [cc.1311-1363]," in J.P. BEAL, J.A. CORIDEN and T.J. GREEN (eds.), *New Commentary on the Code of Canon Law*, commissioned by The Canon Law Society of America, Paulist Press, New York, 2000, 1573.

¹³ John Beal, "Hiding in the Thickets of the Law: canonical reflections on some disturbing aspects of the Dallas Charter," *America*, 7 October 2002, 18.

Prescription in the 1917 Code

The law on prescription in the 1917 Code exempted offences reserved to the Congregation for the Doctrine of the Faith from prescription:

Canon 1703. With due regard for the prescription of canon 1555 §1, concerning delicts reserved to the Sacred Congregation of the Holy Office, the useful time for pursuing a criminal action is three years, unless it concerns:

1. An action for injuries, which is ended after one year;
2. An action from a qualified delict against the sixth or seventh divine precept, which is ended in five years;
3. An action for simony or homicide, against which the criminal action lasts for ten years.¹⁴

The 1917 Code exempted delicts reserved to the Congregation for the Doctrine of the Faith from prescription in canon 1555 §1:

The tribunal of the Congregation of the Holy Office proceeds by its own usage and institutes and retains its own proper customs; lower tribunal also, in cases that concern the tribunal of the Holy Office, should follow the norms given out by it.

Thomas Green notes canon 1703 acknowledges the seriousness of each crime by the length of prescription granted for each crime.¹⁵ More serious offences had longer periods of prescription. Therefore, when the 1917 Code came into effect on 19 May 1918 until 1922 when the instruction *Crimen Sollicitationis* came into effect, prescription for sexual abuse of minors was five years. The Holy Office then was given jurisdiction over paedophilia by the Instruction *Crimen Sollicitationis*,¹⁶ and from 1922 there was no prescription for the crimes of sexual abuse of minors and solicitation until 2001 when *Sacramentorum sanctitatis tutela* was promulgated on April 30, 2001.

Pope John Paul II stated in *Sacramentorum sanctitatis tutela* April 30, 2001 "that an instruction [of the kind of *Crimen sollicitationis*] had the force of law since the Supreme Pontiff, according to the norm of canon 247 §1 of the *Codex Iuris Canonici* promulgated in 1917, presided over the Congregation of the Holy Office, and the

¹⁴ English translation *The 1917 Pio-Benedictine Code of Canon Law*, Edward N. Peters (trans.), (San Francisco: Ignatius Press, 2001); hereafter the translation of the canons of the 1917 Code will be from this source.

¹⁵ Thomas Green, "Sanctions in the Church" in J. A. Coriden, T. J. Green, D. E. Heintschel (eds.), *The Code of Canon Law: A Text and Commentary*, commissioned by The Canon Law Society of America, Paulist Press, (New York, Paulist Press, 1985) 919.

¹⁶ Nicholas Cafardi, *Before Dallas: The US Bishops' Response to Clergy Sexual Abuse of Children*, (Cafardi Before Dallas) (New York: Paulist Press, 2008), 30.

instruction proceeded from his own authority, with the Cardinal at the time only performing the function of a secretary.”¹⁷

Then, just a few weeks later, Cardinal Ratzinger stated the norms of the instruction *Crimen sollicitationis* had been legally binding until *Sacramentorum sanctitatis tutela* came into force.¹⁸

Prescription in the 1983 Code

When the 1917 Code came into force, previous laws were abrogated. Similarly, with the 1983 Code, except for the juridical norms in the decrees of Vatican II, all universal laws contrary to the code and all particular and universal penal laws are abrogated. Canon 6 of the 1983 Code stated:

Canon 6 §1. When this Code takes force, the following were abrogated:

- 1/ the Code of Canon Law promulgated in 1917;
- 2/ other universal or particular laws contrary to the precepts of this Code unless other provision is expressly made for particular laws;
- 3/ any universal or particular penal laws whatsoever issued by the Apostolic See unless they are contained in this Code;
- 4/ other universal disciplinary laws regarding matter which this Code completely reorders.

§2. Insofar as they repeat former law, the canons of this Code must be assessed also in accord with canonical tradition.

Clearly, both universal and particular penal laws were abrogated, changing prescription unless the crimes were reserved to the Congregation for the Doctrine of the Faith:

Canon 1362 §1. Prescription extinguishes a criminal action after three years unless it concerns:

- 1/ delicts reserved to the Congregation for the Doctrine of the Faith;
- 2/ an action arising from the delicts mentioned in canons 1394, 1395, 1397, and 1398, which have a prescription of five years;

¹⁷ John Paul II, *Motu proprio, Sacramentorum sanctitatis tutela*, April 30, 2001, *AAS*, 93(2001) 738.

¹⁸ Congregation for the Doctrine of the Faith, letter, *Ad Exsequendam*, May 18, 2001, *AAS*, 93(2001), 785-786.

3/ delicts which are not punished in the common law if particular law has established another period for prescription.

§2. Prescription runs from the day on which the delict was committed or, if the delict is continuous or habitual, from the day on which it ceased.

Since canon 1362 only prescribed prescription in universal and particular penal laws, it had no effect on competency to deal with a case. Many crimes have prescription attached so that no prosecution may take place after three or five years.

After the promulgation of the 1983 Code there was confusion about penal law and prescription for sexual abuse cases.¹⁹ It is important that there be certainty about what is the law.

In 1991, a distinguished canon lawyer, John Beal thought that from 1983 prescription was for five years for crimes of sexual abuse of minors.²⁰ His opinion was supported by the Secretary of the Pontifical Council for Legislative Texts, Juan Arrieta, who said Cardinal Ratzinger's letter to Cardinal Castillo Lara “presupposes, therefore, that juridical responsibility in [such] matters lies with ordinaries or religious superiors, as is indicated by the letter of the code.”²¹

However, under canon 1362 §1 there is no prescription attached to offences reserved to the Congregation for the Doctrine of the Faith.²² John Kozlowski explains that prescription for the delicts mentioned in canons 1395, 1397 and 1398 occurs after five years unless the delict is reserved to the Congregation for the Doctrine of the Faith.²³

Cardinal Ratzinger had written to Cardinal Castillo Lara, President of the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law, on 19 February 1988 asking for a simpler penal process to dismiss clergy.²⁴ The wording in

¹⁹ Cafardi, *Before Dallas*, 30-31: Cafardi proposed what he thought could have been a solution: “While the statute (i.e. canon 1362 §1, 2) may have applied in canonical penal prosecution that remained at the diocesan level, perhaps all that had to be done to avoid the statute was for the diocese to refer the crime to the Holy Office (now the Congregation for the Doctrine of the Faith) for prosecution. One the crime was referred or reported, the reserved jurisdiction of the Congregation would have become applicable and prescription did not run against those crimes reserved to the Holy Office (Congregation for the Doctrine of the Faith).”

²⁰ John Beal, “To Be or not to Be, That is the Question: The Rights of the Accused in the Canonical Penal Process,” in *CLSA Proceedings*, 53(1991), 82.

²¹ Juan Arrieta, “Cardinal Ratzinger's Influence on the Revision of the Canonical Penal Law System,” in *Origins*, 40(2010), 496.

²² Canon 1362 §1: Prescription extinguishes a criminal action after three years unless it concerns: 1° delicts reserved to the Congregation for the Doctrine of the Faith.

²³ Canon 1362. JOHN KOZLOWSKI OP, “Understanding the *Ius Vigen* of the Mandatory Dismissal Process,” *The Jurist*, 75(2015):2, 403.

²⁴ Juan Arrieta, “Cardinal Ratzinger and the Revision of the Canonical Penal System A Crucial Role”. http://www.vatican.va/resources/resources_arrieta-20101202_en.html.

Cardinal Ratzinger's letter would seem to indicate that he did not seem to think that the Congregation for the Doctrine of the Faith was competent to handle paedophilia cases. Possibly this is because canon 6 of the 1983 Code had abrogated many penal laws.

Three weeks later, Cardinal Castillo Lara of the Pontifical Commission replied in a letter dated 10 March 1988 stating:

In the current Code, the offences that can lead to loss of the clerical state have been clearly indicated: they are listed in canons 1364 §1, 1367, 1370, 1387, 1394 and 1395. At the same time the procedure has been greatly simplified in comparison with the previous norms of the 1917 Code: it has been speeded up and streamlined, partly with a view to encouraging the Ordinaries to exercise their authority through the necessary judgement of the offenders "*ad normam iuris*" and the imposition of the sanctions provided... I can well understand Your Eminence's concern at the fact that the Ordinaries involved did not first exercise their judicial power in order to punish such crimes sufficiently, even to protect the common good of the faithful. Nevertheless, the problem seems to lie not with juridical procedure, but with the responsible exercise of the task of governance.²⁵

At other difficult times in the life of the Church, when there has been confusion of consciences and relaxation of ecclesiastical discipline, the sacred Pastors have not failed to exercise their judicial power in order to protect the supreme good of the "*salus animarum*".²⁶

Soon afterwards, Pope John Paul II restructured the Roman Curia in 1988 with the promulgation of the Apostolic Constitution *Pastor Bonus*,²⁷ which replaced *Regimini Ecclesiae Universae*.²⁸ Article 52 of *Pastor Bonus* gave exclusive penal jurisdiction to the Congregation for the Doctrine of the Faith. This ensured that the Congregation for the Doctrine of the Faith was not only competent with regard to offences against the faith or in the celebration of the sacraments, but also with regard to "more serious offences against morals". However, there was no public statement or advice to bishops about dealing with paedophilia and there was no action from the Congregation.

The existence of the instruction *Crimen Sollicitationis* was not a complete secret. The officers of the Canon Law Society of America visited the Congregation for the Doctrine of the Faith in 1996. In its June 1996 Newsletter, the President reported:

²⁵ Ibid.

²⁶ Ibid.

²⁷ Pope John Paul II, Apostolic Constitution on the Roman Curia, *Pastor Bonus*, 28 June 1988, AAS 80 (1988) 841-924.

²⁸ Pope Paul VI, Apostolic Constitution *Regimini Ecclesiae Universae*, 15 August 1967: http://w2.vatican.va/content/paulvi/la/apost_constitutions/documents/hf_p-vi_apc_19670815_regimini-ecclesiae-universae.html.

The norms on solicitation cases issued in 1962 are currently under review by a commission within the CDF. New norms are required in light of the revision of canon law. In the interim, the 1962 norms should be followed with obvious adaptations.²⁹

On 28 January 1998 Archbishop Philip Wilson, the then Bishop of Wollongong, wrote to the Congregation for the Doctrine of the Faith asking if *Crimen Sollicitationis* was restricted to confession. On 28 February 1998, Archbishop Bertone, the Secretary of the Congregation for the Doctrine of the Faith replied to Bishop Wilson:

Your Excellency,

With your letter of January 28, 1998, regarding the case of a priest accused of sexually abusing a minor, you asked whether the procedure of the *Instructio de modo Procendi in causis sollicitationis* should be followed, or whether these procedures only concern actions which are alleged to have occurred in the context of the Sacrament of Confession.

This Congregation responds that in the above-mentioned case, the procedure of the *Instructio* should be followed as indicated in the fifth chapter of the document (*De crimine pessimo*).³⁰

Archbishop Bertone stated clearly that *Crimen Sollicitationis* was not confined just to solicitation and was still in force for dealing with child sexual abuse crimes. However, there seems to be little evidence of action on this information.

Many bishops around the world thought that the penal process was too difficult to implement; one reason being the lack of qualified, competent and experienced priests. The procedural law of *Crimen Sollicitationis* remained unknown because it had not been publicly promulgated. Most bishops and religious superiors were ignorant of the law and many did not deal with sexual abuse crimes appropriately.

Few people were certain of the law and procedures for prosecuting paedophilia cases. In the 1980s and 1990s most publicity about sexual abuse crimes was concentrated in North America. After negotiations with officials at the Holy See by representatives of the US Catholic Bishops Conference, particular law was legislated for the United States. For a five year period, on 25 April 1994, prescription for sexual abuse crimes

²⁹ Canon Law Society of America Newsletter, quoted in Tom Doyle, The 1922 Instruction and the 1962 Instruction *Crimen Sollicitationis*, promulgated by the Vatican, 3 October 2008; <http://www.awrsipe.com/doyle/2008/2008-10-03-commentary%20on%201922%20and%201962%20documents.pdf>.

³⁰ <http://www.childabuseroyalcommission.gov.au/exhibits/bb3eaddf-9283-41ef-9694-e560738d186a/case-study-14,-June-2014,-sydney>.

in the United States was set at ten years from when the minor had completed 18 years of age.³¹

Prescription after *Sacramentorum Sanctitatis*

On 30 April 2001 Pope John Paul II promulgated the *motu proprio Sacramentorum sanctitatis tutela* [SST]. As universal law, this document listed the sexual abuse of a minor under 18 years of age committed by a cleric as a more grave crime (*delicta graviora*) reserved to the Congregation for the Doctrine of the Faith. Prescription for this crime delict was fixed at 10 years beginning at the completion of the 18th year of the victim, meaning that the victim had until age 28 to lay a complaint.³²

The Promotor of Justice at the Congregation for the Doctrine of the Faith, Msgr Charles Scicluna explains:

The question of prescription with regard to *graviora delicta* is once again much discussed after the *motu proprio* because, for the first time in history, a time limit has been imposed, after which the *actio criminalis* is extinguished for these delicts. Art. 5 §1 indicates that a delict is bound by prescription after ten years, while Art. 5 §2 establishes that this period of ten years runs according to the norm of can. 1362 §2 CIC or of can. 1152 §3 CCEO: Prescription runs from the day on which the delict was committed or, if the delict is continuous or habitual, from the day on which it ceased.

... In cases of sexual abuse, the period of ten years begins to run the day on which the minor completes his eighteenth year. Experience has shown that a term of ten years is inadequate for these types of cases and that it would be desirable to return to the former system in which these delicts were not subject to prescription at all.³³

The victim had until age 28 to lay a complaint. Pope John Paul II granted the Congregation for the Doctrine of the Faith the faculty to derogate from prescription on a case by case basis on November 2, 2002. Charles Scicluna acknowledges "There is a tendency supporting a return to the previous norm, which simply stated that *graviora delicta* were not subject to prescription."³⁴

³¹ William Woestman, OMI, *Ecclesiastical Sanctions and the Penal Process*, (Ottawa, Saint Paul University: 2000), 270-271.

³² Congregation for the Doctrine of the Faith, Circular Letter to help Episcopal Conferences prepare guidelines for the treatment of cases of sexual abuse of minors by clerics, May 3, 2011; http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_2011_0503_abuso-minori_it.html

³³ Mgr. Charles J. Scicluna, Promoter of Justice, The Procedure and Praxis of the Congregation for the Doctrine of the Faith regarding *Graviora Delicta*, http://www.vatican.va/resources/resources_mons-sciicluna-graviora-delicta_en.html

³⁴ Charles Scicluna, "Sexual Abuse of children and Young People by Priests and Religious: Description of the Problem from a Church perspective," (= Scicluna Sexual abuse) in R.K.

Pope Benedict XVI revised the *Sacramentorum sanctitatis tutela* norms on 21 May 2010. Prescription in the case of abuse of minors, was now set as 20 years calculated from the completion of the 18th year of age of the victim who had until age 38 to complain. The Congregation for the Doctrine of the Faith continued to be able to derogate from prescription in individual cases. The canonical delict of acquisition, possession or distribution of pedopornography was also included in this revised *motu proprio*.³⁵

The Congregation for the Doctrine of the Faith Norms of 2001 and as revised in 2010 reserved to the exclusive competence of the Congregation for the Doctrine of the Faith all clerical offences against the 6th commandment with a minor aged under 18 years.³⁶

When a clerical member of a clerical religious institute commits an offence reserved to the Congregation for the Doctrine of the Faith, the religious institute is still involved in the process. The supreme moderator and council decide whether the offence was committed. The supreme moderator forwards the acts of the case with his *Vota* to the Congregation for the Doctrine of the Faith. Then the Congregation for the Doctrine of the Faith determines how each case should be handled and the process to be used.

Charles Scicluna stated that with the promulgation of *Sacramentorum sanctitatis tutela*, "for the first time in history, a time limit has been imposed, after which the *actio criminalis* is extinguished for those delicts [i.e. those reserved to the Congregation for the Doctrine of the Faith]."³⁷ Kozlowski is also of the opinion that prescription of 1362 did not apply to clerical offences against the 6th commandment with a minor when the 1983 code went into effect.³⁸

Issues with Dispensations from Prescription

"Prescription" cannot be dispensed, but it can be derogated. A dispensation relaxes the law, while derogation means that the law does not apply in this particular case.³⁹

Hanson et al, *Sexual Abuse in the Catholic Church: Scientific and Legal Perspectives*, Città del Vaticano, Libreria Editrice Vaticana, 2003, 19.

³⁵ Congregation for the Doctrine of the Faith, *Circular Letter to assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated By Clerics*, 3 May 2011: (CDF Circular Letter) http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_2011_0503_abuso-minori_en.html.

³⁶ Congregation for the Doctrine of the Faith, Article 4, 1, April 30, 2001, in Woestman 304-305.

³⁷ Scicluna Sexual Abuse, 239. Quoted in Kozlowski 422.

³⁸ John Kozlowski OP, "Understanding the *Ius Vogens* of the Mandatory Dismissal Process," *The Jurist*, 75(2015):2, 422.

³⁹ See C.G. Renati, "Prescription and Derogation from Prescription in Sexual Abuse of Minors Cases," (= Renati *The Jurist*, 67(2007), 503; and P. BROWN, "Prescription and Statutes of Limitation," *Proceedings of the Canon Law Society of America*, 70(2008), 384.

Charles Renati points out that the faculty granted to the Congregation for the Doctrine of the Faith to derogate from prescription "did not give the Congregation for the Doctrine of the Faith the power to dispense from the law of prescription itself, but only to set aside the [terms] of prescription"⁴⁰ on a case by case basis.

Thomas Green⁴¹ and Ladislav Orsy⁴² strongly oppose dispensations or derogations from prescription. They point out that retroactive penal laws are prohibited in many countries and legal systems according to the legal maxim "*nulla poena sine lege*."⁴³ The *Universal Declaration of Human Rights* in 1948 stated:

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed."⁴⁴

Changing a law concerning prescription is completely contrary to canon 1313:

Canon 1313§ 1. If a law is changed after an offence has been committed the law which is more favourable to the accused is to be applied. § 2. But if the second law abolishes the first law or at least its penalty, the penalty immediately ceases.

Ex post facto laws are also contrary to the natural law.⁴⁵

Renati is much more nuanced in his interpretation of the Congregation for the Doctrine of the Faith power to derogate. He explains that the power of the Congregation for the Doctrine of the Faith applies only in those cases "for which prescription is still running."⁴⁶ He thinks that a derogation could apply to a case in which the preliminary investigation has been started, but before the investigation or penal action is completed the time limit applies to the case.

In 2002 *Sacramentorum sanctitatis tutela* norm 8a read:

If the case would otherwise be barred by prescription, because sexual abuse of a minor is a grave offence, the bishop/eparch [sic] shall apply to the Congregation for the Doctrine of the Faith for a dispensation from the prescription, while indicating appropriate pastoral reasons.

Three changes were made in the 2006 version:

If the case would otherwise be barred by prescription, because sexual abuse of a minor is a grave offence, the bishop/eparch [sic] may apply to the Congregation for the Doctrine of the Faith for a derogation from the prescription while indicating relevant grave reasons.⁴⁷

The bishop/eparch does not have to ask for a derogation and the Congregation for the Doctrine of the Faith can derogate from the terms of prescription in individual cases, but cannot dispense from the law of prescription itself.⁴⁸ The motivating "relevant grave reasons" would have to be founded on both law and fact.

Derogations are not automatically granted. On June 6, 2017 the Congregation for the Doctrine of the Faith (Prot. No. 274/2017-60703) refused to grant derogation in a long-standing case where there had never been sufficient proof, and where the accused brother had not offended again.⁴⁹ The Congregation said his ministry could be restricted by means of a precept:

However, the public exercise of sacred orders of the brother can be limited by disciplinary means. If it is opportune and necessary you could impose on the brother a precept according to canons 49-51, 1319 and 1339 CIC citing canon 1371 no. 2 warning that the violation of the same would carry the imposition of a punishment.

Should a precept emanate, I ask you to ensure a copy of the aforementioned precept comes to this Dicastery signed by the brother at the moment of his notification.⁵⁰

⁴⁷ Pope John Paul II *motu proprio Sacramentorum sanctitatis tutela*.

⁴⁸ Austin, "Due Process of Law" 74.

⁴⁹ Francis Morrissey OMI, Lecture Notes Penal Law and Jurisprudence, Faculty of Canon Law, Saint Paul University, Ottawa, 2017-2018, 52-53; "Taking into account the time passed and considering that the presumed delicts are already prescribed according to the norm of canon 1703, no. 2 CIC 1917 and furthermore given the advanced age of the above-named brother, this Congregation does not hold that there is sufficient reason to derogate from prescription. Therefore, it is not permissible to commence any penal action against 'X.' However, the public exercise of sacred orders of the brother can be limited by disciplinary means. If it is opportune and necessary you could impose on the brother a precept according to canons 49-51, 1319 and 1339 CIC citing canon 1371 no. 2 warning that the violation of the same would carry the imposition of a punishment. Should a precept emanate, I ask you to ensure a copy of the aforementioned precept comes to this Dicastery signed by the brother at the moment of his notification."

⁵⁰ Francis Morrissey OMI, Lecture Notes Penal Law and Jurisprudence, Faculty of Canon Law, Saint Paul University, Ottawa, 2017-2018, 52-53.

⁴⁰ Renati, "Prescription and Derogation" 505.

⁴¹ Thomas Green, "Clerical Sexual Abuse of Minors: Some Canonical Reflections," *The Jurist*, 63(2003), 417.

⁴² Ladislav Orsy, "Bishops' Norms: Commentary and Evaluation," *Boston College Law Review*, 44(2002-2003), 1015-1016.

⁴³ Austin, "Due Process of Law" 72.

⁴⁴ Article 11, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

⁴⁵ Austin, "Due Process of Law" 73.

⁴⁶ Renati, "Prescription and Derogation", 507.

Francis Morrissey quotes another decision from the Congregation of the Clergy:

A response from the Congregation of the Clergy, April 12, 2017 Prot. No. 20171421 indicates that if a judicial process is underway, the Apostolic Signatura is to be approached for an eventual authorisation to derogate from prescription. However, a response from the Signatura, September 2, 2017 (Prot. No. 53109/17 VT) indicates that it considers prescription to be a constitutive part of penal law, and, therefore, cannot be subject to dispensation; furthermore, it indicates that a dispensation is to be applied for more favourable circumstances, not to be able to impose penalties on a person.”⁵¹

Lay Religious

The prescription for five years in canon 1362 and how it is calculated is the law for dismissal of lay religious for crimes of sexual abuse of minors under canon 695. *Crimen Sollicitationis* only applied to clerical sexual abuse of minors. So, the period of prescription for clerical offences against a minor was not applicable when the 1983 code went into effect and it was only *Sacramentorum sanctitatis tutela* in 2001 which established a period of prescription. Only the Congregation for the Doctrine of the Faith can derogate from prescription. The Congregations for Religious and Societies of Apostolic Life, for Clergy and the Congregation for Divine Worship and the Discipline of the Sacraments do not have the same faculty or right to derogate from prescription in cases before them.

Conclusion

Knowledge of prescription is essential to know what law applies when an accusation is made so that the accused is punished in accord with the canon law that applies at the time. (canon 221 §3) The law on prescription that applies at the time of the offence will determine if a prosecution can take place. The Congregation for the Doctrine of the Faith can derogate from prescription in individual cases when appropriate.⁵² This

⁵¹ Ibid., 52.

⁵² The faculty to derogate from prescription was incorporated into the revised edition of *Sacramentorum Sanctitatis Tutela* on 21 May 2010. In these norms prescription, in the case of abuse of minors, is set for 20 years calculated from the completion of the 18th year of age of the victim:

Art. 7 § 1. A criminal action for delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by prescription after twenty years, with due regard to the right of the Congregation for the Doctrine of the Faith to derogate from prescription in individual cases.

§ 2. Prescription runs according to the norm of can. 1362 § 2 of the Code of Canon Law and canon 1152 § 3 of the Code of Canons of the Eastern Churches. However, in the delict mentioned in art. 6 § 1 n. 1, prescription begins to run from the day on which a minor completes his eighteenth year of age; http://www.vatican.va/resources/resources_norme_en.html

derogation also can apply to the canonical delict of acquisition, possession or distribution of pedopornography.⁵³

The Australian Royal Commission into Institutional Responses to Sexual Abuse reported that victims wanted to prevent others being abused.⁵⁴ Victims often took over 20 years to disclose abuse:

Many victims do not disclose child sexual abuse until many years after the abuse occurred, often when they are well into adulthood. Survivors who spoke with us during a private session took, on average, 23.9 years to tell someone about the abuse and men often took longer to disclose than women (the average for females was 20.6 years and for males was 25.6 years). Some victims never disclose.⁵⁵

The Australian Royal Commission in the Final Report concerning Religious Institutions stated:

In private sessions held up to 31 May 2017, of the 4,029 survivors who told us about child sexual abuse in religious institutions, the majority (3,588 survivors or 89.1 per cent) told us when they first disclosed the abuse. Of these, 2,181 survivors (60.8 per cent) disclosed for the first time when they were an adult and 1,407 survivors (39.2 per cent) disclosed as a child. These figures are broadly consistent with those for survivors who experienced child sexual abuse in institutions under other management. They are also consistent with research which suggests that many people who were sexually abused as children do not disclose their experience of abuse until adulthood. Some survivors who told us they had been sexually abused as children said they had not previously disclosed the abuse. Of the 4,029 survivors who told us in private sessions about child sexual abuse in religious institutions, 3,342 survivors (82.9 per cent) provided information on who they had disclosed to. Of those, 284 survivors (8.5 per cent) said they had not

⁵³ Congregation for the Doctrine of the Faith, *Circular Letter*.

⁵⁴ “We were told that many survivors disclosed because they wanted the abuse to stop or wanted to prevent it happening to others. Other survivors disclosed because they could no longer carry the burden of the secrecy of sexual abuse. Disclosing early can immediately commence the important process of ensuring safety and protection for victims, taking steps to ensure the abuse is stopped and reducing risk to other potential victims. Disclosure is important for victims as well as the institutions involved, other children and the broader community.

Disclosure is rarely a one-off event, and is a process. Victims will disclose in different ways to different people throughout their lives. Disclosures may be verbal or non-verbal, accidental or intentional, partial or complete.” The Royal Commission into Institutional Responses to Child Sexual Abuse, Report 2017, <https://www.childabuseroyalcommission.gov.au/identifying-and-disclosing-child-sexual-abuse>.

⁵⁵ The Royal Commission into Institutional Responses to Child Sexual Abuse, Report 2017; <https://www.childabuseroyalcommission.gov.au/identifying-and-disclosing-child-sexual-abuse>.

disclosed their experience of sexual abuse to anyone prior to telling the Royal Commission.⁵⁶

The data of the complaints to the Catholic Church showed the average length of time between the first incident of abuse and a victim reporting it was 33 years on average:

The Catholic Church claims data showed that the time between the first alleged incident of child sexual abuse and the date when the claim was received by the relevant Catholic Church authority was more than 30 years in 59 per cent of claims, and more than 20 years in 81 per cent of claims. The average time between the first alleged incident date and the date the claim was received was 33 years.⁵⁷

The Australian Royal Commission has demonstrated that minors take on average 30 years to complain about being sexually abused. Sexual abuse is a heinous crime which does enormous damage to the victims. Therefore, the Catholic Church needs to revert to previous law so that there is no prescription for cases of sexual abuse involving clerics, religious brothers and sisters. It needs to be explicitly stated in canon 1362 that there is no prescription for crimes of sexual abuse of minors.

⁵⁶ Ibid., Final Report Religious Institutions, vol. 16, 518; https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_16_religious_institutions_book_1.pdf.

⁵⁷ Ibid., Final Report Religious Institutions, vol. 16, 519.

To Proclaim the Gospel Online - Challenges and Difficulties: Towards a possible Diocesan Protocol for Ministers of the Divine Word in the Online Environment

Michael Nobel*

Introduction

The Internet steadily develops further to become truly a world-wide Web. The Christian faithful have access to content concerning morals and faith worldwide, i.e., a parishioner in Tanzania can read last Sunday's homily of a parish priest from Papua New Guinea, or a parish priest in Australia could download catechetical instruction material from and used in Luxembourg. Expectations become more divergent with regard to the amount of material presented, the presentation itself, and the type of content. In his message for the 46th World Communications Day, Pope Benedict XVI reflects on communication, the search for answers, and the use of the Internet, stating:¹

The process of communication nowadays is largely fuelled by questions in search of answers. Search engines and social networks have become the starting point of communication for many people who are seeking advice, ideas, information and answers. In our time, the internet is becoming ever more a forum for questions and answers – indeed, people today are frequently bombarded with answers to questions they have never asked and to needs of which they were unaware. If we are to recognize and focus upon the truly important questions, then silence is a precious commodity that enables us to exercise proper discernment in the face of the surcharge of stimuli and data that we receive. Amid the complexity and diversity of the world of communications, however, many people find themselves confronted with the ultimate questions of human existence: Who am I? What can I know? What ought I to do? What may I hope? It is important to affirm those who ask these questions, and to open up the possibility of a profound dialogue, by means of words and interchange, but also through the call to silent reflection, something that is often more eloquent than a hasty answer and permits seekers to

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¹ Benedict XVI, "Message of His Holiness Pope Benedict XVI for the 46th World Communications Day. Silence and Word: Path of Evangelization," May 20, 2012; from: http://w2.vatican.va/content/benedict-xvi/en/messages/communications/documents/hf_ben-xvi_mes_20120124_46th-world-communications-day.html.

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Contents

Address of His Holiness Pope Francis to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year Pope Francis	3
Reflections on Pope Francis' Allocution to the Roman Rota Anthony Kerin.....	6
Pope Francis Apostolic Letter <i>Communis Vita</i> The Modification of Canons 694 §1 and Canon 729.....	10
Commentary on Pope Francis' Motu Proprio <i>Communis Vita</i> Anthony Malone ofm	12
Pope Francis Apostolic Letter in form of Motu Proprio <i>Vos estis lux mundi</i>	16
Freedom of Religion in International Law Sebastijan Valentan	25
Less than meets the eye: The Pontifical Secret and Analogous Provisions Justin Glyn SJ	37
The not-for-profit sector: a Roman Catholic view Brian Lucas.....	47
Prescription: a Major Issue in dealing with Sexual Abuse Cases Brendan Daly.....	72
To Proclaim the Gospel Online - Challenges and Difficulties: Towards a possible Diocesan Protocol for Ministers of the Divine Word in the Online Environment Michael Nobel	87
Attachment and Trauma and Matrimonial Consent: Reflections Elizabeth Ong	127

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Address of His Holiness Pope Francis to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year

Clementine Hall 29 January 2019

Excellency,
Dear prelate auditors,

I extend my cordial greetings to each of you, beginning with the Dean, whom I thank for his words. I greet those taking part in this meeting: the officials, the lawyers and other assistants of the Apostolic Tribunal of the Roman Rota. I offer all of you my sincere good wishes for the Judicial Year we are inaugurating today.

The society in which we live is increasingly secularised, and does not further the growth of faith. As a result, the Catholic faithful struggle to bear witness to a lifestyle that is consistent with the Gospel, including with regard to the Sacrament of Marriage. In this context, the Church and her whole organizational structure, should act in harmony, in order to offer appropriate spiritual and pastoral support. In your daily ministry to Christian marriage, you deal with aspects that are not only part of the theology and canon law of marriage, but also, and first of all, the very essence of Christ's Church: *unity* and *fidelity*. Indeed, these two marital "assets", in fact, before being, or rather, in order to be, the legal obligations of every conjugal union in Christ, must be the manifestation of baptismal faith.

In order for marriage to be valid, each of the future spouses must establish full *unity* and harmony with the other, so that through the mutual exchange of their respective human, moral and spiritual riches — almost as if they were communicating vessels — the two spouses may become as one. Marriage also requires the commitment of *fidelity*, that lasts throughout life, becoming a stable *consortium totius vitae* (can. 1135).

Unity and fidelity are two important and necessary values, not only between spouses, but also more generally, in interpersonal and social relationships. We are all aware of the inconvenient factors which, in civil coexistence, lead to unfulfilled promises and the lack of fidelity to the promise made and to commitments assumed.

Unity and *fidelity*. These two indispensable and fundamental marital values must not only be appropriately presented to future spouses, but also require the pastoral action of the Church, especially of bishops and priests, to accompany the family in its different phases of formation and development. Naturally, such pastoral action cannot be confined to the completion of paperwork, albeit necessary and to be done carefully. A threefold approach to marriage preparation is needed: prior, forthcoming, and