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# Rights and Obligations of Alleged Victims and Accused Priests and Religious

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## Introduction

People everywhere are becoming more conscious of human rights and organisations are now expected to do their best to prevent violations. If a violation does occur it should be properly investigated and the victim awarded full reparation. The organisation would then do everything reasonably possible to prevent future violations.<sup>1</sup>

In the past, the focus has been on the one who allegedly committed the crime, but now in many civil judicial systems there is more care for the alleged victims. Maria Ines Franck notes “The emphasis, therefore, seems to have shifted from determining the guilt of the perpetrator and the sanction to be applied to that criminal conduct, to the rights, feelings and expectations of those who have suffered the crime.”<sup>2</sup> The European parliament has emphasised victim rights which has resulted in the French law being changed so victims have rights to information, to active participation in the criminal trial and to reparation for damages. Courts in most Western countries provide counselling and other support for victims. The expectations of the justice systems in the Church have changed dramatically. Alleged victims have the following rights in canon law and natural justice:

### 1. **Right to feel safe, to be listened to, to make their needs known, to be cared for**

Pope Francis on May 31, 2018, wrote a letter to the Chilean people in which he admitted with shame that sexual abuse victims were not listened to, and Church authorities did not take appropriate action as soon as possible.<sup>3</sup> In 2019 Pope Francis legislated for care of the alleged victim in *Vos estis lux mundi*:

#### Art. 5 – Care for persons

- §1. The ecclesiastical Authorities shall commit themselves to ensuring that those who state that they have been harmed, together with their families, are to be treated with dignity and respect, and, in particular, are to be:

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<sup>1</sup> Based on Fabian Salvio, "The Rights of the Victims: International Standards and the Need of a Holistic Approach," in C. Scicluna and M. Wijlens, *Rights of Alleged Victims in Penal Proceedings Provisions in Canon Law and the Criminal Law of Different Legal Systems*, (Baden-Baden: Nomos Verlagsgesellschaft mbH & Co.), 39.

<sup>2</sup> Maria Ines Franck, "Rights of Alleged Victims in Penal Procedures in Argentina and Current Approach to Victims' Rights in Canon Law," in *Rights of Alleged Victims in Penal Proceedings*, 206.

<sup>3</sup> Y. Calderon "The Participation of the Victim of Sexual Abuse in Canonical Penal Proceedings" *Studia canonica* 57(2023) 676.

- a) welcomed, listened to and supported, including through provision of specific services
- b) offered spiritual assistance
- c) offered medical assistance, including therapeutic and psychological assistance, as required by the specific case.

§2. The legitimate protection of the good name and the privacy of all persons involved, as well as the confidentiality of their personal data, must be ensured. To the aforementioned persons the presumption addressed in article 13 §7 shall apply, without prejudice to the provisions of article 20.<sup>4</sup>

Victims and their families have the right to be welcomed and listened to; to be treated with dignity and respect; and to be supported with medical, psychological, and spiritual help. The Dicastery for the Doctrine of the Faith in its *Vademecum* reinforces this:

55. The ecclesiastical authorities must ensure that the alleged victim and his or her family are treated with dignity and respect, and must offer them welcome, attentive hearing and support, also through dedicated services, as well as spiritual, medical and psychological help, as required by the specific case (cf. art. 5 VELM).<sup>5</sup>

Alleged victims have a general right to be cared for with all the counselling, legal, and other practical care they need.

## 2. Right to have their good name protected during the investigation

Everyone has a right to a good reputation in “canon 220. No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy.” This is based on one’s rights in natural law. The alleged victim has a right to privacy and a good reputation. There have been instances of the accused cleric telling other people, even a congregation, the name of the person who has accused them. This has sometimes led to complainants being verbally abused and not being able to attend mass in their parish.

## 3. Right to protection from the accused and the supporters of the accused

It is very upsetting for alleged victims to later meet the accused, especially during the process. Canon 1722 and canon 1392 enable the Ordinary to locate the accused in an area both away from the alleged victim and where the alleged abuse took place.

Some accused clerics have encouraged their family and friends to punish or intimidate alleged victims for laying a complaint. Sadly, Church leaders have often failed to take sufficient canonical action against these accused clerics. Nor have these bishops and other Church leaders helped the alleged victims with civil legal provisions to protect them.

<sup>4</sup> Pope Francis, Motu proprio, Vos estis Lux Mundi, March 25, 2023, [https://www.vatican.va/content/francesco/en/motu\\_proprio/documents/20230325-motu-proprio-vos-estis-lux-mundi-aggiornato.html](https://www.vatican.va/content/francesco/en/motu_proprio/documents/20230325-motu-proprio-vos-estis-lux-mundi-aggiornato.html) (=VELM). 1

<sup>5</sup> DDF, *Vademecum*, June 5, 2022, *Vademecum on certain points of procedure in treating cases of sexual abuse of minors committed by clerics* - Ver. 2.0 (5 June 2022) (vatican.va) (=Vademecum).]

#### 4. **Right to a canonical advocate/procurator so the process is known and understood**

When information is received about an offence, the Ordinary should be initiating a preliminary investigation to establish the facts and circumstances of the allegation, as well as the imputability of the offence unless this enquiry would be entirely superfluous. The Doctrine of the Faith *Vademecum* states

16. Art. 10 § 1 SST (cf. also canons 1717 CIC and 1468 CCEO) states that, when a *notitia de delicto* is received, a preliminary investigation ought to ensue, provided that the report is “*saltem verisimilis*”. If that plausibility proves unfounded, there is no need to pursue the *notitia de delicto*, although care should be taken to keep the documentation, together with a written explanation regarding the reasons for the decision.<sup>6</sup>

The alleged victim will normally be interviewed as part of this preliminary investigation, so already at this stage the alleged victim should have the help of a Victim’s Assistance Coordinator and an Advocate. After the preliminary investigation is completed, the Ordinary will decide whether the accusation is credible and if a judicial or extra-judicial process is to be used.

Alleged victims need an advocate to advise them about processes and their rights. Article 5 of VELM says victims and their families are to be “supported, including through provision of specific services” which would include advocates and canonical advisors.<sup>7</sup>

The accused cleric must have a canonical advocate to advise them, and he is also encouraged to have civil legal advice. Similarly, the alleged victim needs to have representation and canonical advice about the procedures and their rights.

#### 5. **Right to assistance and support (support person for interview)**

Alleged victims suffer spiritually, emotionally, and psychologically and often suffer from post-traumatic stress disorder (PTSD). Alleged victims usually feel very intimidated and at a disadvantage undertaking an interview, so they must be offered the opportunity to have a support person such as a counsellor, family member or friend to accompany them. Bartchak states that in his experience, all those involved with dealing with alleged victims need to be trauma-informed as well as being knowledgeable about canon law.<sup>8</sup> For an alleged victim to be cared for, there needs to be someone such as a victim assistance coordinator.

Church officials can easily retraumatise victims by making unnecessary, judgmental statements about alleged victims without any understanding of the trauma they have experienced.

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<sup>6</sup> *Vademecum* 16.

<sup>7</sup> *Vademecum* 5.

<sup>8</sup> Bartchak, "The Position of Alleged Victims in the Canonical Penal Process," in *Rights of Alleged Victims in Penal Proceedings*, 289.

Crimes involving the sacrament of Penance such as solicitation can impact on the victim physically, psychologically, emotionally, and spiritually.<sup>9</sup> The alleged victim is a key witness and often the only one who witnesses the crime. When the judge or delegate interviews the alleged victim,<sup>10</sup> the person must be treated properly, and their complaint must be taken seriously. Bartchak believes for this reason it is very important for the judge or the delegate to personally interview the alleged victim.

**6. Right to receive information concerning the crime and what the accused is charged with**

The alleged victim can participate and intervene in the process at the discretion of the Ordinary. The Apostolic Signatura has accepted the victim could be allowed to intervene in the extra-judicial process for the reparation of damages since canons 1729-1731 apply by analogy. Since the victim can request for reparation of damages, the alleged victim must be fully informed about their rights as the case proceeds. A clerical abuser with assets can be required to use them for reparation. (C. 128) There could be a directive that a percentage of a cleric's remuneration be diverted to a victim. Such measures would show the Church being pro-active using its own processes as much as possible so that victims are not forced to go to civil courts.

The jurisprudence of the Apostolic Signatura allows for the redacted publication of the decree of adjudication or sentence. The alleged victim has the right to see these documents but often the alleged victim is not made aware of this right. Having an official who informs them of their rights and tells them of procedural developments is so important for justice to be done and to be seen to be done.

**7. Right to recourse against the process chosen and the personnel involved**

Both the accused cleric and the alleged victim could object against a particular person being involved in their case if the person: lacked a good reputation (he/she had abused someone or engaged in misconduct); was not competent; or had a conflict of interest. The alleged victim could also take recourse to the competent Dicastery at the Apostolic See. Judges, promoters of justice and advocates are required to have the appropriate canonical qualifications and a good reputation.

**8. Right to receive information about the progress of the investigation and decisions made**

After sentencing in civil courts, victims in many countries are informed about: where the abuser is living; when the abuser is released from prison; and any application the offender makes to return to a previous job or position. Victims and their families are given the opportunity to advise how the abuse is still impacting on them before these decisions are made.

The Church should also be providing ongoing care and support for victims including keeping them informed about when an abuser is being returned to ministry. Victim(s) should be consulted/informed about this and the vigilance or safety plan that is in place. Victims should be advised when their abuser dies, as they consider this to

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<sup>9</sup> Ibid., 291.

<sup>10</sup> Ibid., 298.

be very important. Archbishop Scicluna told a meeting convened by Pope Francis in February 2019 that victims feel they are not respected when they are not updated about the status of the case and significant events.

#### 9. **Right to offer evidence supporting their claim and to be able to intervene in the process, including making a victim impact statement**

A victim can intervene in the penal process. “Canon 1596 § 1. A person who has an interest can be admitted to intervene in a case at any instance of the litigation, either as a party defending a right or in an accessory way to help a litigant.” The expert Gian Paolo Montini points out that a victim becomes a party in the penal process by making an intervention.<sup>11</sup> As a party the victim can be involved in obtaining proofs, discussing the evidence and the final phase preparing for a decision. The victim can intervene in the penal process and exercise their right once the accused has been summoned. However, the alleged victim cannot be involved in the discussion of the case.

Canons 1596-1597 provide for the intervention of a third party in a case. This same right applies to victims. Montini quotes the Congregation for the Doctrine of the Faith stating in a decision:

The document should express more clearly the right of a victim to intervene in canonical procedures as an injured party and, therefore, his or her right to bring a contentious action to repair damages incurred personally from the delict, within the same canonical process.<sup>12</sup>

Therefore, victims do have a right to participate in extrajudicial process.

Many secular judicial systems allow victims to make a victim impact statement to the court before sentencing. The victims can make this statement giving information to the court about how the offence has affected them. They can express their views about the offending and make the offender aware of how they have been affected. The judge will consider this information when sentencing the offender. The Church must learn how helpful this is to victims and their healing.

#### 10. **Right to a judgment according to the provisions of canon law if that is possible**

Some historical complaints are alleged after the accused has died. The police and Church authorities cannot undertake a proper investigation so moral certainty is not possible. However, in such cases a compensation decision may be made based on probability.

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<sup>11</sup> C. 1596. § 2. To be admitted, the person must present a libellus to the judge before the conclusion of the case; in the libellus the person briefly is to demonstrate his or her right to intervene. § 3. A person who intervenes in a case must be admitted at that stage which the case has reached, with a brief and peremptory period of time assigned to the person to present evidence if the case has reached the probatory period.

<sup>12</sup> G. Montini, “The Rights of Alleged Victims in Canonical Penal Procedures: Current Penal Procedural Canon Law” in C. Scicluna and M. Wijlens, *Rights of Alleged Victims in Canonical Penal Procedures* 31.

When the accused is able to reply to the accusations against him and the truth of the allegations can be decided, the victim has a right to a decision of guilty or innocence of the accused. (c.221) If the accused is guilty, the alleged victim is going to feel vindicated by a guilty decision and this is crucial for the victim to heal and to move on with their life. On the other hand, if someone else other than the accused committed the crime, the alleged victim needs to know that too. Too often the victim is not informed about anything, including whether the accused is returned to ministry or where he lives.

#### 11. **Right to appeal a Sentence or take recourse against an Extra-judicial decree**

Victims are often dissatisfied and unhappy about the outcomes from their complaint. The accused may found not guilty; the complaint may be dismissed or minimised; and the alleged victim is not even informed. Very often victims are not told who they can appeal to. Montini indicates that provided the alleged victim was involved in the first instance case, the victim can be involved in an appeal. (c. 1729 §2)<sup>13</sup>

#### 12. **Right to have the harm inflicted repaired, with redress an apology, counselling, and spiritual support.**

Many victims sue the Church in civil courts in the hope they will get more money. But some victims have been forced to sue for damages in civil courts because they have never been offered any reparation. The Apostolic Signatura decreed in a case that the victim can seek reparation of damages if the penal process ended for any reason.<sup>14</sup> Redress may not be able to compensate for all the harm caused, but it should do everything reasonably possible to repair the damage.<sup>15</sup>

A victim has a right to receive financial and other reparation for damages inflicted by any act placed through culpable actions which would include sexual abuse: “Can. 128 Whoever illegitimately inflicts damage upon someone by a juridic act or by any other act placed with malice or negligence is obliged to repair the damage inflicted.”

Although they were never offered the opportunity to participate fully in penal cases the victim has a clear right to take a litigation case for damages suffered from the crime.<sup>16</sup> This application can be made before during and after any penal process. The

<sup>13</sup> C. 1729 §2. The intervention of the injured party mentioned in §1 is not admitted later if it was not made in the first grade of the penal trial; Montini, *Rights of Alleged Victims in Canonical Penal Procedures* 31.

<sup>14</sup> SSAT (Supremum Signaturae Apostolicae Tribunal), Congressional Decree in a Disciplinarius, 29.10.2015, prot. no. 48706/14 VT, in *Ius Canonicum* 1 [2018], 328–331, in *Rights of Alleged Victims in Penal Proceedings*, 26. “*Exstinctio iudicii poenalis minime secumfert et etiam iudicio de damnis finis imponatur. Exercitium actionis contentiosae ad damna reparanda ab actore pendet, non ab Ordinario. id quoque valet, si pars laesa actionem contentiosam ad damna reparanda in ipso poenali iudicio exerceat.*”

<sup>15</sup> Redress is the act of correcting or compensating for a wrongdoing or grievance.

<sup>16</sup> G. Montini, “The Rights of Alleged Victims in Canonical Penal Procedures Current Penal Procedural Canon Law” in C. Scicluna and M. Wijlens, *Rights of Alleged Victims in Canonical Penal Procedures* 23.

application can be made even if the victim did not participate in the trial.<sup>17</sup> Usually the judge will consider the application for damages after the penal trial has been completed.<sup>18</sup>

## Obligation of Alleged Victims

### 1. Obligation to protect the privacy and the reputation of all involved during the process

Pope Francis legislated in *Vos Estis Lux Mundi* article 4 §3:

An obligation to keep silent may not be imposed on the person claiming to have suffered as a result of a delict or on the witnesses with regard to the contents of their report, without prejudice to the provisions of article 5 §2.<sup>19</sup>

Alleged victims and witnesses cannot be obliged to keep silent about the abuse. They may notify police and other authorities. However, *Vos Estis Lux Mundi* obliges them in article 5 §2 to protect the good name and privacy of all persons involved:

The legitimate protection of the good name and the privacy of all persons involved, as well as the confidentiality of their personal data, must be ensured. To the aforementioned persons the presumption addressed in article 13 §7 shall apply, without prejudice to the provisions of article 20.<sup>20</sup>

The alleged victim should be respecting the process and procedures while an investigation is being carried out. Speaking to the media at this time may impact on the investigation and impact the reputation and privacy of other people. The alleged victim has an obligation to enable justice to be achieved in a case.

## Conclusion

In summary alleged victims have the following rights:

1. Right to feel safe, to be listened to, to make their needs known, to be cared for
2. Right to have their good name protected during the investigation
3. Right to protection from the accused and the supporters of the accused
4. Right to a canonical advocate/procurator so the process is known and understood
5. Right to assistance and support (support person for interview)
6. Right to receive information concerning the crime and what the accused is charged with
7. Right to recourse against the process chosen and the personnel involved

<sup>17</sup> “*Omnino certum manet utramque actionem, seu poenalem et contentiosam ad damna reparanda, quae in eodem delicto fundatur, etiam separatim exerceri posse*” (SSAT [Supremum Signaturae Apostolicae Tribunal], vote annexed to letter 10.7.1989, prot. no. 19126/87 CP) in G. Montini, “The Rights of Alleged Victims in Canonical Penal Procedures Current Penal Procedural Canon Law” in C. Scicluna and M. Wijlens, *Rights of Alleged Victims in Penal Proceedings* 23; c. 1729 §3.

<sup>18</sup> cc. 1729-1731

<sup>19</sup> VELM 4.

<sup>20</sup> VELM 5.

8. Right to receive information about the progress of the investigation and decisions made
9. Right to offer evidence supporting their claim and to be able to intervene in the process, including making a victim impact statement
10. Right to a judgment according to the provisions of canon law if that is possible
11. Right to appeal a Sentence or take recourse against an Extrajudicial decree
12. Right to have the harm inflicted repaired, with financial support and redress, an apology, counselling, and spiritual support.

### **Obligations of Victims and Alleged Victims**

1. The obligation to protect the privacy and the reputation of all involved during the process

Victims and alleged victims need to be informed of their rights to be able to actually exercise them. The preliminary article of the French code of criminal procedures states that “criminal procedure must be fair and adversarial and preserve the balance of the rights of the parties.”<sup>21</sup> Many alleged victims perceive that the Church system is biased against them. When ordinary people learn that the accused priest or religious must be represented by a canon lawyer,<sup>22</sup> but no particular provision is made for alleged victims, they note the injustice. The credibility of the Catholic Church is at stake when justice is either not done or not seen to be done.

### **Rights and Obligations of Accused Clerics**

We have all heard many terrible stories of victims having brought their complaints of sexual abuse to bishops and religious superiors and frequently the victims were not believed, ignored or even threatened. Today the pendulum has swung to the opposite extreme in some places. E.g. In the past I have heard of a priest being accused of sexual abuse. The first the accused priest knew about it was when he received a call from a church official who told him “you have been accused of sexual abuse. You are to be out of the presbytery by 5 pm today when the locks will be changed.”

These approaches to victims and accused priests and religious are completely wrong and not in accord with canon law. Some church officials act as if canon law does not apply to them and they seem to think they can do whatever they like. They should be aware that the accused cleric has rights.

#### **1. Right to Presumption of innocence**

It is a fundamental principle in canon law that the accused is considered innocent until proven guilty. Canon 1321 states “§1. Any person is considered innocent until the contrary is proved.” Juan Arias and Juan Arrieta explain:

the intention is to set out the general principle of penal law that the accused person is presumed innocent, to safeguard his or her integrity. This implies the need for

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<sup>21</sup> Raphael Parizot, "The Rights of Alleged Victims in Penal Procedures in France," in C. Scicluna and M. Wijlens, *Rights of Alleged Victims in Penal Proceedings*, 220.

<sup>22</sup> Canon 1481 §2. In a penal trial, the accused must always have an advocate either appointed personally or assigned by the judge.

evidence to demonstrate the guilt of the accused and to enable those who must impose a penalty to form moral certainty (c.1608). It also means that those who have to judge should set aside any prejudice, and evaluate the circumstances of each case in an impartial and objective manner.”<sup>23</sup>

The Dicastery for Legislative Texts explains “the presumption of innocence of the accused person is a general principle of every system of law, aimed at protecting the image of people in the face of any attempts to illegitimately tarnish their good reputation.<sup>24</sup> This means that assessments of cases of alleged abuse have to start from this perspective eliminating prejudice, so the judge is impartial. However, when criminal reports are received by church authorities, precautionary measures are often necessary to ensure justice is achieved and potential victims are protected. Therefore, the accused cleric may be prohibited to exercise sacred ministry and may be required to live at a particular place etc. (c. 1722) The church authorities must still always protect the presumption of innocence.”<sup>25</sup>

## 2. Right to have his good name protected during the investigation

The right to a good reputation arises from natural law. A person’s right to a good reputation is enshrined in canon 220: “No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy.”

During an investigation, canon 1717 §2 recalls the duty in justice to protect the good name of the persons involved (cf. canon 220), whether they are the alleged victim(s) or the accused himself.<sup>26</sup> These principles mean that all those involved must be careful what they say to others and in particular what is stated to the media. The Dicastery for Legislative Texts pointed out:

Canon 220 establishes a general principle prohibiting slander and defamation (see also Nos. 2477-2479 CCC), declaring that “it is not lawful for anyone to illegitimately injure the reputation one enjoys... it does not seem permissible to justify the publication of such information for alleged reasons of transparency or compensation... In conclusion, having as an inalienable legal basis the statement of the Supreme Pontiff Francis that “it is necessary to avoid the publication of lists of the accused, even by dioceses, before the prior investigation and the final condemnation... the answer cannot

<sup>23</sup> Arrieta, J, *Code of Canon Law Annotated*, 4th ed. (Montreal: Wilson & Lafleur, 2022) 1026-1027. (hereinafter referred to as *Code of Canon Law Annotated*)

<sup>24</sup> Dicastery of Legislative Texts. *Penal Sanctions in the Church: User Guide for Book VI of the Code of Canon Law, 2023*, 7; (Hereinafter *Penal Sanctions User Guide*) <https://www.delegumtextibus.va/content/dam/testilegislativi/TESTI%20NORMATIVI/Testi%20Norm%20CIC/Libro%20VI/LibroVISussidio/Penal%20sanctions%20User%20guide.pdf>.

<sup>25</sup> *Penal Sanctions User Guide* 191... Moreover, in adopting such measures, one cannot fail to take into account the fact that the new canon 1321 §1 calls for the presumption of innocence to be protected at all times (cf. n. 17),

<sup>26</sup> *Code of Canon Law Annotated*, 79; canon 1717 §2. Care must be taken so that the good name of anyone is not endangered from this investigation

but be negative with respect to the publishing of confidential information concerning anyone, all the more so when it concerns deceased persons.<sup>27</sup>

### 3. Right to a civil and a canonical advocate/procurator

The accused cleric must have an advocate.<sup>28</sup> The judge or delegate must advise the accused cleric of his right to have an advocate. This advocate could also be a procurator so that he is able to act on behalf of the accused cleric.<sup>29</sup>

The Dicastery for the Doctrine of the Faith explains this right:

98. With the new *Norms* promulgated in 2021 (cf. art. 20 § 7 SST), it is explicitly stipulated by the law for the case of an extrajudicial process in matters reserved to the DDF that the accused, in accordance with the prescriptions of canons 1723 and 1481 §§ 1-2 CIC, be assisted by an advocate and/or procurator, either of his own choice or, otherwise, appointed *ex officio*. The Ordinary (or his delegate) must be informed of the appointment of the advocate and/or procurator by means of a suitable and authentic procuratorial mandate in accordance with canon 1484 § 1 CIC, prior to the session in which the accusations and proofs are made known, in order to verify that the requirements of canon 1483 CIC have been met.<sup>30</sup>

To be properly advised, both the accused and the advocate performing his/her role, must know the details of the accusation, unless the sacrament of Penance and the seal of confession is involved. Then the complainant has the right to anonymity.

Financing the advocate is frequently an issue. A religious institute must finance the canon or civil lawyer to advise their member. An accused must negotiate with his Ordinary, normally a diocesan bishop, about the provision of civil and canonical

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<sup>27</sup> Dicastery for Legislative Texts, Reply concerning the publication of names of clerics allegedly guilty of sexual abuse, 5 September 2024. NO. 18316/2024. Original Italian accessed 11 March 2025 at:

[https://www.delegumtextibus.va/content/dam/testilegislativi/CHIARIMENTI%20NORMATIVI/Ch%20Normativi%20Ris%20Particolari/Chiar%20normativi%20CIC/Prot.18316\\_2024\\_Circa%20dovere%20pera%20bona%20fama%20defuncti%20can.%202020.pdf](https://www.delegumtextibus.va/content/dam/testilegislativi/CHIARIMENTI%20NORMATIVI/Ch%20Normativi%20Ris%20Particolari/Chiar%20normativi%20CIC/Prot.18316_2024_Circa%20dovere%20pera%20bona%20fama%20defuncti%20can.%202020.pdf)

<sup>28</sup> Canon 1723 §1. The judge who cites the accused must invite the accused to appoint an advocate according to the norm of can. 1481, §1 within the time limit set by the judge.”

§2. If the accused does not make provision, the judge is to appoint an advocate before the joinder of the issue; this advocate will remain in this function as long as the accused does not appoint an advocate personally.

<sup>29</sup> Canon 1481 §1. A party can freely appoint an advocate and procurator; except for the cases established in §§2 and 3, however, the party can also petition and respond personally unless the judge has decided that the services of a procurator or advocate are necessary.

§2. In a penal trial, the accused must always have an advocate either appointed personally or assigned by the judge.

<sup>30</sup> Dicastery for the Doctrine of the Faith, *Vademecum: On Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*, 5 June 2022, Ver. 2; (hereinafter *Vademecum*, 98;

[https://www.vatican.va/roman\\_curia/congregations/cfaith/ddf/rc\\_ddf\\_doc\\_20220605\\_vademecum-casi-abuso-2.0\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.0_en.html)

advice. The diocesan bishop is obliged to defend the rights of his priests.<sup>31</sup> Therefore, the diocese would be obliged to ensure that the accused appoints a canon lawyer or has one assigned for him. The provision of a civil lawyer is another matter.<sup>32</sup> If the accused is also facing civil charges, he would be entitled to legal aid in many countries.

The diocese paying for lawyers is a sensitive issue. When a priest has stolen a substantial sum from the diocese and parishes, it is upsetting for parishioners to discover that the accused priest is getting one of the most expensive lawyers at diocesan expense to get his sentence reduced as much as possible. A diocese may have a policy for example that a priest provides his own civil lawyer<sup>33</sup> on the understanding that if he is found not guilty, the diocese will refund his legal expenses.

#### 4. Right to remuneration and support

All clergy dedicated to ecclesiastical ministry have a right to remuneration in canon 281 §1. Canon 281 expresses the right of clergy who work or have worked in sacred ministry, to receive adequate remuneration, and social assistance in sickness and old age. The right to remuneration is linked to the diocese, personal prelature or religious institute of incardination. The remuneration is not a stipend for work performed but the Ordinary can take in account income from other sources such as military pensions.<sup>34</sup>

Since clerics dedicate themselves to ecclesiastical ministry, they deserve remuneration. The Dicastery for the Doctrine of the Faith explains this right in its *Vademecum*.<sup>35</sup>

Apart from the loss of the clerical state<sup>36</sup> which includes loss of all rights as a cleric, a suspended cleric, or a cleric prohibited from the exercise of public ministry has a right to remuneration Canon 1350 §1). Clerics dismissed from the clerical state cannot be employed by the Ordinary in any capacity (c. 1350 §2). The remuneration granted to a clergy who is not in active ministry may be less than what a clergy in active ministry receives. However, as the canon states “care must always be taken that he does not lack what is necessary for his worthy support.”

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<sup>31</sup> Canon 384. With special solicitude, a diocesan bishop is to attend to presbyters and listen to them as assistants and counselors. He is to protect their rights and take care that they correctly fulfill the obligations proper to their state and that the means and institutions which they need to foster spiritual and intellectual life are available to them. He also is to take care that provision is made for their decent support and social assistance, according to the norm of law.

<sup>32</sup> Canon 1464. Questions concerning the provision for judicial expenses or a grant of gratuitous legal assistance which had been requested from the very beginning and other such questions as a rule must be dealt with before the joinder of the issue.

<sup>33</sup> Canon 1649 §1. The bishop who directs the tribunal is to establish norms concerning:  
1/ the requirement of the parties to pay or compensate judicial expenses;  
3/ the grant of gratuitous legal assistance or reduction of the expenses;

<sup>34</sup> Pontifical Council for Legislative Texts, decree, 29 April 2000, *Communicationes* 32(2000) 162-167.

<sup>35</sup> *Vademecum*, 98.

<sup>36</sup> *Code of Canon Law Annotated*, 1058; The remuneration is not a stipend for work performed but can consider other systems of income from other sources such as military pensions.

## 5. Right to a decision based on moral certitude

When decisions are made about compensating victims, the standard of proof is often probability that the person was abused. This may be the case especially when the accused cleric is deceased, or when the Church must fulfill the requirements of civil law. However, the standard of proof for finding a person guilty of a crime in a church penal process is the standard of moral certainty (c. 1608; 1342; 1343 §3). Judith Hahn explains that the standard of beyond reasonable doubt is practically the same as moral certainty.<sup>37</sup>

## 6. Right to be judged according to the provisions of canon law

All Christ's faithful, including clerics, have the rights enshrined in canon 221:

- 1) To vindicate and defend their rights in a competent church forum in §1
- 2) the right to be judged according to the precepts of canon law applied with equity §2
- 3) the right that only be punished with canonical penalties only as allowed in canon law<sup>38</sup>

The diocesan bishop can only dispense from disciplinary within the limits of his competence. He cannot dispense "from procedural or penal laws" so he can use some other procedures.<sup>39</sup> He must follow canonical procedures and implement them.(c.392) All procedures and protocols of dioceses and the bishops conference must comply with universal law.<sup>40</sup> Accused clergy have the right to be judged justly and with canonical legal safeguards. (C. 221§3) If the protocol document for investigating abuse complaints in a diocese or a territory has provisions contrary to the universal law of the Church, the accused cleric can take recourse or appeal to the competent dicastery.

There are many procedural rights including: the right to know and deny the accusation (c.1620); the right to recourse against the process chosen and the personnel

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<sup>37</sup> Judith Hahn, "What does it mean to be "morally certain"? How secular standards of proof help to understand canonical decision making", *The Canonist*. Vol 11. No. 2. 242, and Judith Hahn, 'Moral Certitude: Merits and Demerits of the Standard of Proof Applied in Roman Catholic Jurisprudence', 8(2019), *Oxford Journal of Law and Religion*, 324.

<sup>38</sup> C. 221§1. The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law. §2. If they are summoned to a trial by a competent authority, the Christian faithful also have the right to be judged according to the precepts of the law applied with equity.

§3. The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law. (All translations of the Code of Canon Law 1983 by the American Canon Law Society and taken from [https://www.vatican.va/archive/cod-iuris-canonici/cic\\_index\\_en.html](https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html))

<sup>39</sup> C. 87 §1. A diocesan bishop, whenever he judges that it contributes to their spiritual good, is able to dispense the faithful from universal and particular disciplinary laws issued for his territory or his subjects by the supreme authority of the Church. He is not able to dispense, however, from procedural or penal laws nor from those whose dispensation is specially reserved to the Apostolic See or some other authority.

<sup>40</sup> C. 135 §2. A lower legislator cannot validly issue a law contrary to higher law.

involved who may have a conflict of interest (cc.1448, 1449); the right to not take an oath and the right to remain silent and not incriminate oneself (c.1728); the right to know the punishment proposed including if a dismissal is being sought

(c.1720); the right to actively participate in the instruction of the case and to suggest witnesses (c.1720); the right to see the acts (c.1598); the right to submit written arguments or briefs (c.1603); the right to speak last (c.1725); the right to have the most favourable law applied (c.1313); the right to a proportionate penalty (c.1349); the right reject the renunciation of the trial (c.1724); the right to be acquitted if he is innocent (c.1726); the right to see the sentence (cc.1614, 1615); the right to challenge the decision or sentence (c.1734); the right to a suspension of the judgment upon appeal (c.1353).

### **Obligations of the Accused**

The Dicastery for the Doctrine of the Faith *Vademecum* enables a bishop to use canon 1722 from the beginning of the preliminary investigation concerning an alleged more grave crime:

58. To defend the good name of the persons involved and to protect the public good, as well as to avoid other factors (for example, the rise of scandal, the risk of concealment of future evidence, the presence of threats or other conduct meant to dissuade the alleged victim from exercising his or her rights, the protection of other possible victims), in accordance with art. 10 § 2 SST, the Ordinary or Hierarch has the right, from the outset of the preliminary investigation, to impose the precautionary measures listed in canons 1722 CIC and 1473 CCEO.<sup>41</sup>

The Dicastery for Legislative Texts explains that a bishop can use those same measures from the beginning of the preliminary investigation in allegations of other crimes:

However, during the preliminary investigation, with just cause and on the basis of the ordinary attributions that are proper to it (cf. can. 392), the ecclesiastical Authority can adopt by Decree (cf. Appendix 3) adequate disciplinary measures, proportional, and reasonably limited in time: for example, by limiting the exercise of the pastoral ministry or ecclesiastical office of the subject under investigation, even in cases not reserved to the Dicastery for the Doctrine of the Faith.<sup>42</sup>

Therefore, the bishop can prohibit the exercise of sacred ministry, require the accused to live in a particular place etc while canonical processes are in action. A bishop might write something like this:

Because of the seriousness of the allegations against you, and to respond to the spiritual and pastoral needs of the Church community and for your own good and the good the Church, in accord with the provisions of canons 49 and 1339 § 1, I hereby admonish and warn you:

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<sup>41</sup> *Vademecum*, 58.

<sup>42</sup> *Penal Law User Guide*, 191.

1. To avoid any contact whatsoever and in any other manner, either at your initiative or from their own initiative, with persons under the age of 18 years unless in the presence of an adult.
2. To avoid any contact whatsoever and in any manner, either from your own initiative or from their own initiative, with the person who has lodged the above referenced complaint against you.
3. Not to interfere with the process including by distributing information about the accuser in any manner or means.
4. To avoid any contact whatsoever and in any manner, either from your own initiative or from their own initiative, with the family members or friends of the person who has lodged the above referenced complaint against you.
5. To avoid physical presence in the parish of.....and town of.....which is where the allegation arose.
6. To avoid persons or situations that could endanger your continence or any conduct that might cause scandal to the faithful or that would receive publicity in the media.

I require you to live at..... You require my prior written permission to stay overnight anywhere else.

The provisions of this precept are necessary and prudent precautions as a pastoral measure to protect the rights and reputations of all involved and to safeguard the salvation of souls.

The gravity of this matter requires me to state further that failing to observe the provisions of this precept shall be deemed a violation of canon 1371 §1, which can result in further disciplinary action against you, and which may render you liable to additional canonical penalties. Accordingly, this precept itself stands as a canonical warning concerning these matters.

Yours sincerely in Christ,

Bishop

## **Conclusion**

Accused clerics and religious have many rights enshrined in canon law, either in the Code of Canon Law or in other documents. The accused cleric also has obligations to enable justice to be achieved in a case. In summary the rights and obligations are:

1. Right to Presumption of innocence
2. Right to have his good name protected during the investigation
3. Right to a civil and a canonical advocate/procurator
4. Right to remuneration and support
5. Right to a decision based on moral certitude
6. Right to be judged according to the provisions of canon law
7. Right to deny the accusation
8. Right to recourse against the process chosen and the personnel involved
9. Right not take an oath
10. Right not to incriminate himself i.e. to remain silent and not to admit the offence

11. Right to Know the Accusation and the Punishment proposed including if a dismissal is being sought (an accuser in a case involving the sacrament of Penance has a right to anonymity)
12. Right to actively participate in the instruction of the case
13. Right to see the acts
14. Right to submit written arguments or briefs
15. Right to speak last
16. Right to have the most favourable law applied
17. Right to a proportionate penalty
18. Right to reject the renunciation of the trial
19. Right to be acquitted if he is innocent
20. Right to see the sentence
21. Right to challenge the Decision or Sentence
22. Right to a suspension of the Judgment upon Appeal

### **Obligations of the Accused Priests and Religious**

1. Not to interfere with any canonical or civil process, including e.g. by not getting parishioners to sign a petition he is innocent or distributing information about the accuser in any manner or means.
2. To avoid any contact whatsoever and in any manner with the person who has lodged the complaint against him.
3. To avoid any contact whatsoever and in any manner, with the family members or friends of the person who has lodged the complaint against him.
4. To observe any precepts or requirements imposed by the diocesan bishop or Ordinary that may include the following provisions:
  - 4.1 To avoid any contact whatsoever and in any other manner, either at your initiative or from their own initiative, with persons under the age of 18 years unless in the presence of an adult.
  - 4.2 To avoid physical presence in the parish of.....and town of.....which is where the allegation arose.
  - 4.3 To avoid persons or situations that could endanger your continence or any conduct that might cause scandal to the faithful or that would receive publicity in the media.
  - 4.4 To live at a particular address.

### **Conclusion**

Upholding the rights of the alleged victims and the accused clerics and religious is very challenging for all those involved. The purpose of penal law as canon 1311 §2 states is “the restoration of justice, the reform of the offender, and the repair of scandal.” Penal law and canonical procedures are necessary to protect essential elements of the spiritual society which is the Church. These elements include the rights of individuals whether they are the alleged victim or are the accused.