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Handling a Cleric impeded from Ministry due to *Amentia* or Psychic Infirmary

• Abstract •

Mental health is a reality that must be dealt with properly in the community, both ecclesial and non-ecclesial ones. Sacred ministers too may not be immune from becoming victims of *amentia* or other forms of psychological illness. It may happen that an ordained minister suffers from some form of insanity or psychological infirmity, yet he still needs to perform acts of ministry within the community where he is assigned. The question then arises, in case a sacred minister suffers from insanity or psychological illness, does the code of canon law provide sufficient avenues protecting the sacred ministry and the Christians from the involuntary acts of the sick cleric, which may compromise the dignity of the sacred ministry and morals in the church community? This article therefore brings to light the basic legal avenues provided by the 1983 Code which the Ordinary may use to protect the dignity of sacred ministry from the involuntary acts of such a minister when under the influence of the mental condition.

Keywords: Declaration of impediment, Removal of faculties, Experts, Dispensation, Jurisprudence.

Introduction

To handle the question of ministry and sacred ministers whose mental health compromises their effectiveness in ministry or makes them perform acts that may scandalize the community upon which they are assigned to serve, the 1983 Code of Canon Law provides room for the declaration of impediment for the patient while they are in that volatile state, until they recover fully and be stable enough to carry out the acts of ministry. This paper therefore discusses three main actions

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that can be taken by the Ordinary in order to address such emergencies until the said cleric recovers. They include restriction of exercise of ministry, restriction or withdrawal of the faculties, and declaration of impediment. When one recovers, however, he has to be restored back to ministry by the Ordinary.

Provisions of the 1983 Code of Canon Law

The 1983 Code of Canon Law¹ addressing irregularities and impediments for the exercise of the order already received declares in c. 1044 § 2, 2° that one who suffers from insanity (*amentia*) or some other psychological infirmity mentioned in c. 1041, 1° is impeded from exercising the order already received, until such a time when the Ordinary, after consulting the experts, allows him to exercise the order in question. It has already been demonstrated that this impediment is incurred *ex defectu* even though the 1983 Code does not make express use of this phrase (Okello Ogutu, 2025, pp. 187–202).

We begin by underlining first that an ordained minister does not incur automatically the impediment in the said canons by a mere fact of suffering or having suffered from insanity or any form of psychological infirmity. C. 1041, 1° and 1044 § 2, 2° of the 1983 Code demonstrate that, to constitute an impediment, the *amentia* or the psychic infirmity in question must render a cleric incapable (*inhabilis*) of fulfilling the sacred ministry rightly. Second, such an impediment is incurred when the Ordinary makes an official written declaration that the cleric in question is impeded from exercising the sacred order already received. The Ordinary, having consulted an expert, makes such a declaration after judging from the expert's report and from his own evaluation of the situation of the cleric he sees that in his current state the said cleric cannot rightly fulfill the sacred ministry for which he was ordained. In other words, in addition to the existence of *amentia* or a psychological infirmity, the informed judgement of the Ordinary obtained after consulting an expert and the eventual declaration of the existence of an impediment is necessary for this impediment to be incurred because "the 'incapacitating' effect of these conditions may not be immediately evident to untrained observer" (Beal, 1996, p. 438).

¹ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, 1–317 (hereinafter: CIC/83). For an English translation, see The 1983 Code of Canon Law available at <https://www.iuscangreg.it/cic1983.php>

Consultation of Experts and Judgement of the Ordinary

C. 689 § 2, 1041, 1°, and 1044 § 2, 2° of the 1983 Code recognize that psychic infirmities and *amentia* can deprive a person of the ability to carry out the responsibilities that must be carried out by the ordained ministers. In these cases, the aid of experts in determining the impact of the infirmity on the ministry to be performed is necessary. The role of the experts is that of offering a diagnosis of the problem and giving an evaluation of the impact of the infirmity on the ability of the cleric to fulfil sacred ministry. The work of the expert in this case is not that of deciding about the status of the affected candidate or as to whether the affected ordained minister who has healed from the disturbance is capable of properly fulfilling the ministry (Pavanello, 1999, pp. 286–288; Gilbert, 1985, p. 729; Woestman, 1995, p. 628). The expert's task is to diagnose the illness as well as its incapacitating influence in the particular case of a cleric presented to him for evaluation. Though they form part of the discernment process used by the Church, the experts do not make decisions about the case. The decision is made by the Ordinary himself. It is the Ordinary who, after consulting with the expert and seriously considering all circumstances, makes a legitimate conclusion (Buges, 2019, p. 15; Geisinger, 2000, pp. 1215–1216; Kaslyn, 2002, p. 796). Therefore, the ordinary must conduct “a careful assessment of the implications of a disorder from which a cleric may suffer, no matter what its objective severity may be, for his ability to meet the demands of *ministerium*” (Beal, 1996, p. 436). Based on the jurisprudence set by the Apostolic Signatura in the definitive sentence *coram* Davino of 4th May 1996 it can then be legitimately concluded however, “that it is not the responsibility of the experts to bring forth a judgement on the matter, but that of the Ordinary alone, who after having consulted the experts and assiduously weighed the rest of the circumstances (c. 1579 § 1) can do so legitimately judge. If in the future the situation is overcome, the same ordinary can permit again the exercise of orders.”²

For this impediment to be declared a psychic infirmity or *amentia* must truly be present, and they must have a negative impact on the ability of the cleric to perform acts of sacred ministry. In addition to this, the Ordinary must declare whether the incumbent psychic infirmity or insanity greatly affects the ability of the person in question from performing sacred ministry correctly. In fact, Gonzalez del Valle relating these three factors, rightly puts it that “The origin of the irregularity is the psychological infirmity and not the true or false judgement regarding its existence. Therefore, he who receives orders due to mistaken favorable

² Supremum Tribunal Signaturae Apostolicae, Sententia definitiva *coram* Davino, 4 May 1996, Prot. N. 23737/92 CA, n. 3.

judgement is affected by the impediment. And conversely, he who has mistakenly received an adverse judgement does not incur the impediment.” (Gonzalez del Valle, 2004, p. 986).

The impact of the psychic infirmity and *amentia* must be assessed by use of experts and the decision be made by the Ordinary.³ The law does not specify the kind of experts who are to be consulted. It does not say whether they are to be lay persons (c. 228 § 2) or clerics (c. 258), psychologists or any other kind of medical expert. This way the law leaves this part open to any persons considered experts either by profession or by experience. However, experts in psychology and psychiatry are to be the very first ones to consult (Lagges, 1996, p. 53). Other persons who are considered experts in other pertinent fields may be consulted depending on the candidate’s specific situation, while protecting the cleric’s right to privacy and good reputation (Geisinger, 2000, p. 1216).

There are recent doctrinal development and debates on the possibility of declaring priests suffering from pedophilia and ephebophilia as impeded from ministry based on the provisions of c. 1042, 2°. One part of the doctrine holds that a psychological infirmity can constitute an impediment only when it affects the use of will and intellect such that one can no longer act rationally and exercise the power of orders validly. On this ground, since these two infirmities do not affect the use of reason and will, they equally do not render the priests unable to fulfil rightly the ministry (Woestman, 1995, p. 626). On the other hand, some argue that an infirmity that gives rise to impediments must not necessarily have to deprive the person of the use of reason. The existence or not of an impediment or irregularity must be judged always on individual cases based on the effect of the defect on the person and the ministry to be performed (Beal, 1996, pp. 440–441, 447).

This doctrinal debate is of importance in developing reflections on this topic. For now, drawing from the reasoning anchored on the jurisprudence of the Apostolic Signatura and reflections from learned authors it becomes necessary to make the following affirmations. First, for a psychic infirmity or *amentia* to be considered as resulting to an impediment, it should be in such a way that it can eliminate or exclude the necessary imputability of the said person from committing a delict or in such a way that he cannot be blamed for some acts he does under the influence of such a condition.⁴ That is, he lacks moral responsibility over any

³ C. 224 of the 1975 *Schema* had mentioned psychic defect *qua inhabilis reddatur*. Instead, c. 994 of the 1980 *Schema* spoke of psychic defect *quo consultis peritis, inhabilis iudicatur*. No explanation is granted for that change.

⁴ *Supremum Tribunal Signaturae Apostolicae, Sententia definitiva coram Davino*, 4 May 1996, Prot. N. 23737/92 CA, n. 2b. The argument presented is: “Again and again the undersigned have

act he does (Kaslyn, 2012, p. 796). Second, each case of psychological infirmity and *amentia* must be treated on individual basis, by taking into consideration of the gravity of the illness, its effects on the priest and his ministry, the result of the therapy of the experts, and the limiting effect of the disorder on performance of ministry.⁵ Therefore, the existence of the psychic infirmity such as ephebophilia and pedophilia do not automatically render a person irregular or impeded from exercising the orders already received, but instead the impact of these psychic infirmities and *amentia* must be assessed by use of experts and be judged on individual basis before a decision is arrived at of declaring whether it constitutes an impediment or not.

Acts that May Precede the Declaration and Dispensation of the Impediment

For ordained ministers who find themselves affected by *amentia* or any kind of psychic infirmity, which gravely compromises their ability to fulfill sacred ministry rightly, the Ordinary ought to declare the existence of the impediment. The declaration, which is not obligatory, should be made after consulting the experts, and evaluated beyond reasonable doubt that the cleric is actually suffering from either of them. The ordinary then proceeds to judge whether this psychological illness or insanity has really affected the said cleric in such a manner that he is rendered incapable of fulfilling the ministry rightly (*rite*). However, while waiting for the diagnosis and reports of the experts, the Ordinary may be forced by circumstances to restrict the exercise of some ministries by the affected cleric or

thought to declare strongly that disordered sexual behavior need not necessarily or always be attributed to mental illness or defect, such that there can never be a discussion about moral responsibility or serious guilt, but a judgement must be made in each individual case after carefully considering every factor. Indeed, even when a person is afflicted with a psychic illness, there remains for him a serious obligation to make use of, to the best of his ability, all licit means for treatment and for avoiding disordered sexual actions.”

⁵ *Supremum Tribunal Signaturae Apostolicae, Sententia definitiva coram Davino*, 4 May 1996, Prot. N. 23737/92 CA, n. 3. It is argued that “Clerics who have sinned against the sixth commandment of the Decalogue with a minor, in certain circumstances — we repeat, — and so not always, can be considered unable (*inhabiles*) not because they have perpetrated immoral acts — it is undisputed that a moral judgement about the subject is not at stake in the present discussion — but because their behavior can be a sign of the existence of some mental disorder or a serious disturbance of the mind. Nor is a diagnosis of some illness sufficient, such as so called *ephebophilia*, that is, a sexual attraction to adolescents. There must be a consideration of the gravity of the illness, its effect on the priest and his ministry, the result of the therapy that has been undergone, measures for limiting effects of the illness, etc.”

to refrain him from making use of certain faculties in order to protect the sacred ministry from abuse, or in order to protect Christians from being subjected to scandal or other cases of such genre, depending on the circumstances and the situation leading to such an action.

Two administrative institutions, that is, restriction of exercise of ministry and declaration of an impediment, may be employed by the Ordinary either in these cases, or in the case of declaring other impediments or of administrative disciplinary actions where need be. We, therefore, analyze each of these possible acts of the Ordinary when an ordained minister is officially declared impeded from the exercise of orders.

Administrative Prohibition or Restriction of the Exercise of Ministry

Administrative restriction of the exercise of ministry by the Ordinary may take two forms. The first is, the prohibition or restriction of the exercise of certain ministries by the clergy whose suitability to perform ministries is being examined,⁶ the second is the revocation of the habitual faculties of the priest or restricting the exercise of these faculties to certain situations and conditions while leaving intact those faculties which are already granted by law.

During the presbyterial ordination, besides the faculties that the Ordinary grants to the presbyter, the priest obtains several faculties *ipso iure*. However, there are two specific faculties which require the intervention of the Ordinary for their exercise. That is, the granting of the faculty for administering sacramental absolution of sins (c. 966 § 1) and exercising the faculty of preaching the word of God (c. 764). Though this second faculty is granted *ipso iure*, its exercise can be restricted by the ordinary. The Ordinary therefore, has the power to revoke or restrict the exercise of the faculty of preaching or absolving the sins, as well as any other faculty granted to the priest by virtue of proper law if there is any.

When it comes to preaching, c. 764 makes it clear that priests and deacons enjoy the faculty to preach everywhere unless this faculty has been restricted or removed by the competent ordinary, or when an express permission is required by particular law. Since the Church has the duty to regulate the exercise of the

⁶ Two examples of this case, we see in two definitive sentences of the Apostolic signature on this matter. The first one is *Supremum Tribunal Signaturae Apostolicae, Sententia definitiva coram* Grocholewski, 28 April 2007, Prot. N. 37937/05 CA, published in *Ius Ecclesiae* 19 (2007), pp. 611–621. The second case is the *Supremum Tribunal Signaturae Apostolicae, Sententia definitiva coram* Echevarria, 18 March 2006, Prot. N. 32108/01 CA.

ministry of preaching, then in case a deacon or a presbyter has been gravely by psychic infirmity or *amentia* such that he cannot rightly fulfill the teaching office, then the canon provides proper administrative remedy for this. First, depending on the condition of the said cleric, the competent ordinary of the said cleric may restrict the exercise of this faculty by the said cleric to certain occasions or groups of people. Where the condition of the cleric is so severe such that his cognitive and volitional faculties are gravely inhibited by the psychological illness or insanity, the competent Ordinary may as well remove this faculty so that the ailing cleric is barred from preaching in public as long as his condition persists. This is an administrative measure taken by the Ordinary, because the law permits him to place such administrative restrictions in certain circumstances. In this case, these administrative measures are taken based on the suitability of the cleric in question to fulfil the ministry of preaching.

Even though the canon does not describe the kinds of causes that may be admitted as justifying causes for the restriction or the removal of this faculty, the learned authors and the jurisprudence of the Apostolic Signatura have established that since the restriction or removal of the faculty to preach is a serious matter, then for this to be done there must be a just and proportionate cause (*ob quamlibet iustam et proportionatam causam*).⁷ Without a just cause or where the administrative action taken is not proportionate to the motivating cause, then the validity of the restriction or removal of this faculty cannot be justified.

The second case where the intervention of the competent Ordinary is required for the exercise of sacred ministry is in matters of celebration of the sacrament of penance. C. 974 establishes that when there is a just and grave reason, the competent Ordinary may restrict or revoke the habitual faculty of a priest. From the very words of the canon, the competent Ordinary can revoke the faculty of listening to confession granted upon a priest. The revocation of this faculty is a singular administrative act. The canon demands that this revocation of the faculty must be justified by the presence of a grave cause (*ob gravem causam*), especially if the faculty is a habitual faculty or when it is annexed to an office.

The canon goes ahead even to underline the consequences of the revocation of the faculty by the various competent Ordinaries. If the faculty given by one's own proper local Ordinary (that is, the Ordinary of the place of incardination or of the place of domicile) and the revocation is done by the same proper Ordinary, the presbyter loses the faculty everywhere. That is, he remains deprived of this faculty

⁷ Supremum Tribunal Signaturae Apostolicae, Sententia definitiva *coram* Grocholewski, 28 April 2007, Prot. N. 37937/05 CA, n. 10, (a).

everywhere. If, however, the revocation is made by another local Ordinary, the presbyter loses it only in the territory of that Ordinary who has revoked it. That is, the presbyter remains deprived of the faculty of confession only in the territory of that Ordinary. For the case of the religious, if the revocation is carried out by presbyter's own major Superior, the presbyter is deprived everywhere of the faculty of hearing the confessions of the members of the institute and of those who reside day and night in their respective houses. If, however, the revocation is done by another competent Superior, the presbyter is deprived of it only with respect to the subjects who are in that superior's jurisdiction.

Based on the recent jurisprudence of the Apostolic Signatura is such cases, the Ordinary's administrative decision to prohibit or restrict the exercise of ministry by a cleric is an administrative act, that is, a non-penal restriction of the public exercise of ministry by means of an administrative decree. It is not an imposition of a penalty, which in itself would demand a judicial or administrative penal process. This is well elaborated in the definitive sentence *coram* Echevarria, where we read that "The decision by which e.g. the conferring of an ecclesiastical office by a competent authority is impugned because of the lack of suitability of the candidate or the faculty either to preach or to hear confessions is revoked, respectively in accordance with c. 764 and 974 § 1, is in no way the inflicting of a penalty, for which is required moral certainty concerning a gravely imputable crime committed, but a non-penal disciplinary decision, which may be imposed because of a positive and probable doubt concerning the suitability of the cleric in matters concerned."⁸

Even though the consequences incurred in a penal administrative decree and the disciplinary non-penal decree may be so close, the two are never the same.⁹ The difference between the two always has to be sorted from the motives for which the decree is produced,¹⁰ and the procedure employed in communicating

⁸ Supremum Tribunal Signaturae Apostolicae, Sententia definitiva *coram* Echevarria, 20 July 2006, Prot. N. 32108/01 CA, n. 6 (from Pamplona).

⁹ For instance, the penalty of suspension (c. 1333), prohibits a cleric who is suspended from exercising all or some of the powers of orders, governance, rights, or functions inherent in his office; an expiatory penalty (c. 1336 § 1, 3^o) may as well prohibit the exercise of a given power or *munus*; at the same time, a disciplinary non-penal decree granted to a cleric may prohibit someone as well from exercising all or some acts of sacred ministry. Therefore, the criteria of the consequences resulting from these two ways, cannot be used as efficient means of showing the distinction between the two. Such a confusion is seen even in the sentence *coram* Echevarria, in which, the Congregation for the clergy, had erroneously perceived the disciplinary non-penal decree of the Ordinary to be a penal decree imposing a penalty.

¹⁰ Cf. Supremum Tribunal Signaturae Apostolicae, Sententia definitiva *coram* Grochowski, 28 April 2007, Prot. N. 37937/05 CA, n. 12: "Moreover, the *coetus* of consultors of the Pontifical

the decision of the Ordinary.¹¹ As a matter of fact, a disciplinary non-penal decree restricting the exercise of ministry or restricting the exercise of certain faculties is a singular administrative act and is subject to administrative recourse. Therefore, as a matter of fact and justice, it is necessary that there be a just and proportionate cause to justify the imposition of the restriction. This point has been emphasized by the jurisprudence of the Apostolic Signatura in the definitive sentence *coram* Fagiolo, when it said that: “Perhaps it should also have been more fully explained in what way the imposing of that examination may be reconciled with the right of every person to protect his own privacy (c. 220), and on what canonical norms is based the general ban on celebrating public liturgy.”¹²

Denial of the Required Permissions to Place Some Acts of Sacred Ministry

Besides the restriction of the exercise of the faculty of preaching and revocation of the faculties of preaching and of listening to confessions, the 1983 Code still foresees other possibilities in which the ordinary could intervene administratively to limit the exercise of ministry by a cleric who is insane or who suffers from any kind of psychological illness. The Code acknowledges that the ordained minister acquires certain faculties *ipso iure*, and that their exercise may not need an express intervention of the bishop. However, there are cases where the law demands that the sacred ministers obtain permission in order to perform the ministry in a particular place. In such cases, the bishop may reserve in individual cases the granting of the permission in such cases or restrict the presbyters in charge from granting permission to such persons.

The recent jurisprudence of the Apostolic Signatura equally strengthens the administrative restriction of the exercise of certain acts of sacred ministry. There are at least four cases in the Code.

commission for revising the Code of canon law made the distinction between perpetual penalties and penalties for an indeterminate time (*Communicationes* 8 (1976), 174). Therefore, based on the alleged permanence of the revocation of the faculties, it cannot be concluded that the case truly concerns a penal matter and not a non-penal, merely administrative matter.”

¹¹ An administrative or judicial penal procedure, for imposing a penalty may be initiated when a delict has been committed and there is no other pastoral means available for repairing the scandal, restoring justice, and amending the guilt (c. 1341); while the non-penal administrative decree is not a response to the commission of a delict and the cause of the restriction on the ministry ought to reflect this circumstance.

¹² *Supremum Tribunal Signaturae Apostolicae, Sententia definitiva coram* Fagiolo, 11 June 1993, Prot. N. 22785/91 CA.

First, we have the case of exercising the faculty to preach. Besides the restriction of the exercise of this faculty or its removal by the Ordinary, the law also foresees the possibility of exercising this faculty. C. 764 foresees the possibility of the particular laws demanding that for a deacon or a presbyter to preach in certain places they need to obtain the permission from the concerned authorities. Equally, the same canon foresees that for a presbyter or a deacon to preach, they should obtain the consent at least even a presumed one of the persons in charge of churches (rector). This way then, person in charge of the church (rector) whose consent is required for a priest or deacon to preach may refuse to grant that consent. This consent may as well be refused the insane cleric by the persons who have the responsibility to see that the word of God is preached with integrity to the people of God under his pastoral care as described in c. 528 § 1, and even the by competent religious superiors when it comes to preaching in the oratories or churches under their care (c. 765). The denial of consent or permission for an ordained presbyter or deacon to preach in these cases is a serious matter for they constraint the exercise of a faculty, hence there must be a serious reason for this. For a priest or deacon who is insane or psychologically sick, this should be done only when the situation is so serious such that the cleric is unable to carry out the teaching office rightly.

The jurisprudence of the Apostolic Signatura foresees three other cases in which such permission may as well be denied. In the Sentence *coram* Grocholewski, the Apostolic Signatura foresees the possibility of the diocesan Bishop restricting the exercise of four other faculties of a priest serving within his diocese by reserving to himself the granting of the required consent and permissions for the celebration of certain sacraments to priests who find themselves, before they administer them. this applies in the celebration of the sacraments of the anointing of the sick where a reasonable cause and permission of the priest upon whom care of souls is entrusted with respect to the faithful under his pastoral care (c. 1003 § 2). Second is assisting in marriages, where a priest requires the delegation of the parish priest or the Ordinary in order to assist in marriage (c. 1108 § 2 and 1111). Finally, we have the celebration of the eucharist in church and other public places in accordance with the provisions of c. 902, 903, 904 and 561, in cases where those in charge of churches or public places need to give consent and confirm the commendatory letters before permitting presbyters to celebrate or concelebrate in the eucharistic celebration.¹³

¹³ Supremum Tribunal Signaturae Apostolicae, Sententia definitiva *coram* Grocholewski, 28 April 2007, Prot. N. 37937/05 CA, n. 10 (b-d). In this the Signatura explains that “principally the

In all these four cases, the priests in charge of the churches and care of soul may deny a cleric suffering from *amentia* or any form of psychic infirmity the permission to celebrate the sacraments or preach in the church if they see that their condition does not allow them to celebrate these sacraments or carry out the acts of ministry correctly. The Apostolic Signatura, however, goes ahead to hold that for better control of the situation and activities of the sick cleric in this case, the competent Ordinary may reserve to himself the granting of the required permissions in these cases. This enables him to keenly make a follow-up of the progress made by the sick cleric in his recovery process.

Since the denial of the permission for the sick clerics in this case to perform the said acts of ministry is of administrative nature, then it is required that this be done only when there is a just, reasonable and proportionate cause. Of which in this case, the protection of reverence due to the sacred ministry and the protection of the faith of the Christian faithful could suffice as a just cause in the case of priests who are insane or who are ill psychologically.

Communication of the Restriction or Revocation of the Faculties

The prohibition or restriction of exercise of ministry or revocation of the faculty is very serious matter hence, the action taken should be expressed in writing and be communicated by means of a decree or a precept.¹⁴ As a mandatory component of a singular decree, even though this is not required *ad validitatem* for the emana-

celebration of the anointing of the sick appertains to the priest who has the care of soul of that sick person. Any other priest may administer this sacrament only with the presumed consent of the named priests (c. 1003), for the Signatura, an Ordinary may reserve to himself the authority of granting consent to a certain priest before he administers the sacrament to a sick person; for the celebration of matrimony, the law has it that the local ordinary or parish priest have the faculty to celebrate them (c. 1108), and those who are delegated by these two to celebrate them (c. 1111 § 1). For the Signatura, an Ordinary may decide to remove from a parish priest this faculty of delegating this faculty to others; for the sacrament of Baptism, one cannot administer baptism outside his territory without the permission (c. 862), for the Signatura, the Ordinary may reserve to himself the concession of this permission or consent to a particular priest before he administers baptism outside his territory; finally, concerning the sacrament of the Eucharist, a priest outside his diocese or religious community ought to present the «celebrate» signed by the ordinary before he is permitted to celebrate mass, according to the Signatura, the Ordinary may refuse to give the «celebrate» to his priest.”

¹⁴ In fact, according to the provisions of c. 1319 § 1 of the 1983 Code, a singular precept can also threaten a penalty in case its provisions are violated by the person. It is always advisable that a mention of the return and respective consequences to be incurred in case of its violation (c. 1371, 2°).

tion of these decrees restricting the exercise of ministry or removing the faculty, the provisions established in c. 50 and 51 of the 1983 Code should be followed for practical reasons, because such a decree contains a decision which may restrict even the exercise of some rights of the cleric and is subject to administrative recourse. The Ordinary must seek the necessary information and proof if there is a reason for restricting the ministry; he must consult at least the parties whose rights may be affected by such a decision (beginning with the affected cleric himself where he makes him to understand the reason for his action if his cognitive faculties have not been severely affected by the infirmity); it must be issued in writing; and it must be motivated, that is, it must state in a summary form at least the reasons for the decision. It must also express clearly the terms and conditions of the limitation or revocation of the faculty. These obligatory elements for a singular decree must not be left out because, given that this decree may gravely change the life of a priest or deacon, the preliminary investigation helps the Ordinary not to make arbitrary decisions. They grant the cleric as well, the opportunity to exercise his right of defense and to explain the situation from his point of view; and protects also the good name (reputation) of the cleric (c. 220) and opens the door for administrative recourse in case one feels that he has been injured by the decree of the Ordinary.¹⁵

Despite the different positions taken by the doctrine, the jurisprudence of the Apostolic Signatura has been consistent in holding the nullity of the singular decrees which are issued without a motivating reason at least even in summary form.¹⁶ The Signatura, explaining on the scope of the phrase, that “the reason should be given at least in summary form”, establishes that the law does not require a complete and exhaustive motive,¹⁷ but the motive should be present at least implicitly or refer to motives expressed in another document external to the decree itself in the terms of c. 1617 of the 1983 Code.¹⁸ That is, the motive can be given in summary form or in *per relationem* (D’Auria, 2007, p. 254; Montini, 2018, p. 124; Ortiz, 1999, pp. 80–81; Gullo, 1984, p. 96), that is, referring to the motives

¹⁵ Supremum Tribunal Signaturae Apostolicae, Sententia definitiva *coram* Echevarria, 20 July 2006, Prot. N. 32108/01 CA.

¹⁶ Cf. Supremum Signaturae Apostolicae Tribunal, Sententia definitiva *coram* Burke, 22 November 2008, n. 5, Prot. N. 38820/06 CA.

¹⁷ Cf. Supremum Signaturae Apostolicae Tribunal, Decretum Congressus, 22 October 2009, Prot. N. 42125/09 CA. see also Supremum Signaturae Apostolicae Tribunal, Decree of the Congress, 27 January 2010, Prot. N. 41217/08 CA. See also Supremum Signaturae Apostolicae Tribunal, Decree of the Congress, 27 January 2010, Prot. N. 41693/08 CA.

¹⁸ Supremum Signaturae Apostolicae Tribunal, Sententia definitiva *coram* Agustoni, 24 March 2001, Prot. N. 27795/97 CA.

contained in the decree in contention.¹⁹ In its summary form, the motive must be sufficient, not so general and generic but must be well founded and specific, that is, it must be *ad rem*.²⁰ Besides all that, the reason or motive must be true.²¹

The restriction of the exercise of ministry or withdrawal of the faculty for the exercise of ministry can be temporary, indeterminate or permanent. It can also be partial or total. The developing jurisprudence of the Apostolic Signatura foresees three possibilities, that an administrative restriction can either be perpetual, for a determinate period of time, and for an indeterminate period of time. Beginning with the first kind, that is, a perpetual restriction, the Apostolic Signatura acknowledges that there are certain administrative measures and decisions taken by the Ordinaries which by nature are perpetual. This applies to cases of transfer and removal of a parish priest elaborated in c. 1740 to 1742. These are non-penal administrative measures that are perpetual by nature. Accordingly, the possibility of making perpetual prohibitions or restrictions on the exercise of power of sacred orders or of jurisdiction, was considered in the sentence *coram* Fagiolo. In this case, the Apostolic Signatura admitted that such a prohibition can be imposed only for a just and proportionate cause while that cause persists. Second, a perpetual prohibition on the exercise of power of orders or jurisdiction can only be recognized as a disciplinary precept but still with difficulty.²²

Since the jurisprudence of the Apostolic Signatura is still growing in relation to this kind of restriction of exercise of ministry it is wise that this possibility may not be utilized by Ordinaries until it is well developed and defined by the jurisprudence. Otherwise, any decree imposing a perpetual restriction of faculties or of the exercise of ministry in general may quickly be perceived as a penal measure, which indeed may require the use of penal process to impose a penalty.

Second the restriction can be imposed for a determinate period of time (*ad tempus determinatum*). This occurs when the prohibition is given for a defined period of time, provided in the decree it is well indicated that the measure is not a penalty but rather an administrative measure given for a just cause. This gives room for re-evaluation of the situation of the sick clergy after the expiry of the period indi-

¹⁹ Supremum Signaturae Apostolicae Tribunal, Decretum Congressus, 27 January 2010, Prot. N. 41217/08 CA.

²⁰ Supremum Signaturae Apostolicae Tribunal, Decretum definitivum *coram* Silvestrini, 5 May 1990, Prot. N. 18061/86 CA.

²¹ Supremum Signaturae Apostolicae Tribunal, Decretum segretarii, 17 September 2009, Prot. N. 42790/09 CA.

²² Supremum Tribunal Signaturae Apostolicae, Sententia definitiva *coram* Fagiolo, 11 June 1993, Prot. N. 22785/91 CA, n. 6.

cated in the decree. For instance, when a priest becomes insane and the Ordinary restricts the exercise of the faculty for preaching in church during Mass to community celebration of not more than three people for a period of three years. In this case, after three years he is to evaluate the progress of his situation and thereafter renew the restriction or allow him to continue with the exercise of ministry.

The restriction may as well be for an indeterminate period of time (*ad tempus indeterminatum*). This happens when the Superior imposes a restriction, not foreseeing when to remove it or to reduce their severity, hence, it endures as long as the cause endures. The difficulty in this case comes when it becomes a question of differentiating between a perpetual restriction (like in the case of a transfer from one office to another), and restriction *ad tempus indeterminatum*. The difference between the two is explained by the Signatura in *coram* Grocholewski.²³ According to this sentence, restriction *in perpetuo* (perpetual restriction) implies that the Ordinary is imposing the restriction forever. That is, the Ordinary does not foresee neither its end nor its removal nor its reduction. This could be the case for instance where the Ordinary decides to revoke the faculty of listening to confession of a parish priest who is insane and does not intend to restore him back to the office of the parish priest or grant him the faculty of listening to confession even in future because at one time he made a direct violation of the seal of confession at the very beginning of his sickness. With restriction *ad tempus indeterminatum*, instead, the intention of the restriction is to remove them at least or to reduce their severity when the cause comes to an end, even if he does not know when that moment will come. This would be the case for instance where the Ordinary revokes the faculty for confession for a priest who is insane, and he intends to restore the faculty when he heals from this.

Therefore, if the Ordinary has the intention of prohibiting the exercise of public ministry of a cleric *ad tempus determinatum*, he must always provide some space for exercise of some functions even in private, like celebration of Mass and administration of the anointing of the sick. Therefore, he may say for instance, Rev. XX is prohibited from exercising all acts of priestly ministry except either celebration of Holy Mass without the participation of the Christians or celebrate mass without the express permission of the ordinary. Without this provision or possibility

²³ Cf. Supremum Tribunal Signaturae Apostolicae, Sententia definitiva *coram* Grocholewski, 28 April 2007, Prot. N. 37937/05 CA, n. 12. The judges insist in this case that “In the light of the motivating reasons together with the final cause of the decision, it appears that this was connected with avoiding the danger of civil lawsuit, such that it could in itself be revoked when the danger ceased. Hence it is not a matter of perpetual decision in the cause, but one made for an indeterminate time, that is, while the cause endures.”

such a decree will not be perceived as a disciplinary decree but a penal decree, for it will be imparting a perpetual restriction.

Declaration of an Impediment

For a person who finds himself in a state of irregularity or impediment, while, in order, it is necessary that the ordinary, after he has secured himself with the presence of irregularity, declares the existence of an impediment or irregularity via a decree. This declaration is an administrative act. With this declaration, the impediment is juridically established and with this the cleric is barred from performing any act of orders except the case of absolution and remission of penalties in cases of danger of death (c. 976). The same requirements for producing a decree must be respected in this case, because this document is subject to recourse if the subject feels that he needs some administrative justice (Geisinger, 2000, p. 1223; Gonzalez del Valle, 2004, p. 986). Once declared, the impediment is officially recognized, and in order to be received back to the ministry, it is necessary that the Superior grants a dispensation from the irregularity or impediment or wait until the impediment ceases by itself.

Though the Ordinary has the power to dispense from this impediment mentioned in c. 1041, 1° it is prudent that even if the experts have given a favorable report after certain period of follow-up and journeying with the affected cleric, he can dispense the candidate in stages. That is, he may dispense the impediment but rehabilitate him back to ministry gradually depending on the situation and stability obtained in the process of healing. Whenever he judges the existence of a just cause for doing so, he may dispense him and allow him to celebrate masses in private. Then later allow him to begin celebrating masses in public if he is truly stable but maybe without the faculty to preach or hear confessions of the faithful. When the Superior assures himself that now the clergy is stable, he can now grant to him the faculty to listen to confessions and allow him to preach during Mass.

The question which remains, and which ought to be thought and reflected over is this, does the declaration of impediment prohibit all the exercise of ministry or can an ordinary impose a partial impediment? Secondly, can an impeded priest in this case, celebrate Mass in private as it happens in the case of administrative non-penal decrees or restriction of exercise of ministry. According to Woestman (1995), once impeded, one cannot exercise orders. he argues: "It is evident that a person is either impeded by c. 1044 § 2, 2° from exercising orders or not impeded. There is no middle ground. Thus, a priest could not be impeded by this impediment from celebrating the Eucharist publicly and at the same time is not

impeded from celebrating privately.” Geisinger instead foresees the possibility of permitting the exercise or celebration of some private masses and other ministries like burials. He says: “If a man is declared prohibited from exercising his order, competent authority may permit exceptions by means of another administrative act (c. 59), e.g., so that a restricted priest might celebrate the funeral of one of his parents.” (Geisinger, 2000, p. 1223). This therefore remains a matter of further discussion by learned authors.

Possibility of Recourse

Since the restriction of exercise of sacred ministry or revocation of certain faculties, and even the declaration of impediment is an administrative act, it is of importance to know that through such acts some administrative injustices may occur. With the decree declaring an insane priest or one suffering from psychic infirmity of whichever kind as impeded from exercising the orders already reserved, one’s rights may be injured through such a decree. Hence, besides the cleric himself, some other people’s rights could also be injured. Therefore, based on the provisions of c. 1737 § 1, any person who claims, or supposes, or thinks to have been aggrieved by the decree of the Ordinary in this case can initiate hierarchical recourse against the decree. This implies that the capacity to launch a recourse is enjoyed by not only him who is the direct recipient of the singular administrative act, but all other subjects whose rights or interests are presumed to have been injured by this singular administrative act.

It is therefore necessary that the person who initiates a recourse demonstrates clearly that there is actually an interest or a right that has been harmed by the decree of the Ordinary, an interest or right which is personal, actual, direct and protected by the law either directly or indirectly. He must demonstrate that with the recourse he may obtain some concrete advantage which gives him the hope of winning in the recourse and that the interest still persists, because, according to the jurisprudence of the Signatura, when the interest ceases, the recourse too becomes pending.²⁴

²⁴ Cf. *Supremum Signaturae Apostolicae Tribunal*, Decretum, 18 March 2004, Prot N. 33965/03 CA; *Supremum Signaturae Apostolicae Tribunal*, Decretum, 15 July 2004, Prot. N. 35029/03 CA.

Dispensation of the Impediment

When one suffers from *amentia* or any other form of psychic infirmity before receiving the sacrament of orders, he becomes irregular for the reception of orders. If he suffers from the same after receiving the sacrament of orders, he is impeded from exercising the order already received but he also becomes irregular for the reception of a higher order from the one he has already received. The dispensation from the irregularity and impediment arising due to *amentia* and psychological infirmity is not reserved to the Holy See. Therefore, the Ordinary has the power to dispense it. A look at c. 1041, 1° and 1044 § 2, 2°, a question immediately emerges concerning the very nature of irregularity in c. 1041, 1°. That is, in some cases, experience and psychological analysis have shown that some kinds of *amentia* and psychic infirmities can heal completely after some treatment by psychiatrists and psychologists. In this case, it becomes so difficult to understand how a temporary condition which can cease with time with proper treatment still turns out to be an irregularity.

As an irregularity and impediment incurred *ex defectu*, like any other irregularity or impediment *ex defectu*, it ceases only when the condition of the patient ceases completely or with dispensation (Cappello, 1934, p. 519). For some scholars, this case of c. 1041, 1° is actually a simple impediment which can cease by itself, but not an irregularity, which by nature ought to be perpetual (Gonzalez del Valle, 2004, p. 985; Olivares, 1993, p. 593; Geisinger, 2000, p. 1215). Among these scholars, some maintain that in this case, in order to allow someone to assume sacred orders and even in exercising of the orders received, the question of dispensation does not come into play. Only the declaration of the Ordinary is required. Hence it is not a matter of dispensation but a matter of simple authorization to exercise ministry by the Ordinary (Gonzalez del Valle, 2004, p. 986). Other scholars hold that this condition remains irregular even if someone who was sick is healed completely, because it is the law itself which has established it as an irregularity, hence, for it to cease, the intervention of the Ordinary is necessary by dispensation (Chiappetta, 1988, p. 153; Pavanello, 1999, p. 286). For some authors, the case of psychological infirmity has to be extended to include cases of suicide as well. This way the necessity of making use of experts in determining the psychological reasons leading to such an act arises (Kaslyn, 2012, p. 797).

Despite all this, the dispensation from an impediment for the exercise of orders on the grounds of insanity or psychic illness lies with the Ordinary. It is of great importance to remember that for the Ordinary to restrict the exercise of ministry or to revoke the faculties or to declare a cleric impeded from exercise of

orders there must be a serious cause. An Ordinary should never apply any of these administrative measures without a just and proportionate cause, and for cases of revocation of faculty of hearing confession a just and grave cause is needed. Equally, once the cleric overcomes the sickness and he is judged to be fine, the restriction should be removed, the revoked faculty restored, and the declared impediment be dispensed by the competent Ordinary.

Conclusions

Even though the law provides the Ordinaries with the power to restrict the exercise of ministry by a cleric suffering from amentia or any form of sickness, or to revoke his faculties, or to an extreme to declare him impeded from exercising the orders already received in more severe cases, the Ordinary must understand that his first duty as a father is to take care of the sick cleric as part of his fatherly duty towards the clergy (c. 384). His priority should not be that of punishing the cleric or taking quick disciplinary action, but that of providing proper medical care for this sick member of his presbyterate.

The three actions and avenues provided by the law are administrative avenues. The ordinary must use his power of discretion in employing any of them to ensure that he does not cause harm to the sick cleric but rather ensure that the wellness of the cleric is worked for. He should not act arbitrarily to show his dominance over the cleric but use them as a tool of love and concern towards the sick brother. Given this then, he should be aware that any of the three administrative avenues provided are always open to recourse in case he uses them arbitrarily or when he harms the rights of the sick cleric or of others through these decisions.

References

- Beal, J. P. (1996). Too good to be true? A response to Professor Woestman on the interpretation of canons 1041, 1° and 1044, §2, 2°. *Monitor Ecclesiasticus*, 121, pp. 431–463.
- Buges, C. (2019). Imputabilità e uso di ragione (Imputability and use of reason). *Commentarium pro Religiosis*, 100, pp. 297–315.
- Chiappetta, L. (1988). *Il Codice di diritto canonico. Commento giuridico-pastorale. Vol. I* (The Code of Canon Law: Juridical-Pastoral Comment. Vol. I). Napoli: Edizioni Dehoniane.
- D'Auria, A. (2007). “Causa petendi” e “Reformatio in peius”: alcune considerazioni sul can. 1739 (“Causa petendi” and “Reformatio in peius”: Some considerations on can. 1739). *Periodica*, 96, pp. 249–284.
- Geisinger, R. J. (2000). Orders. cc. 1008–1054. In: J. Beal, J. A. Coriden, T. J. Green (Eds.). *New Commentary on the Code of Canon Law* (pp. 1193–1233). New York: Paulist Press.

- Gilbert, E. J. (1985). Orders, cc. 1008-1054. In: J. A. Coriden, T. I. Green, D. E. Heintschel (Eds.). *The Code of Canon Law. A Text and Commentary* (pp. 713–739). London: G. Chapman.
- Gonzalez del Valle, J. M. (2004). Irregularities and Other Impediments, cc. 1040-1049. In: E. Capparos (Ed.). *Exegetical commentary on the Code of Canon Law, vol. III* (pp. 980–1015). Montreal: Wilson & Lafleur.
- Gullo, C. (1984). Il Ricorso Gerarchico: Procedura e Decisione (Hierarchical Recourse: Procedure and Decision). In: I. Gordon (Ed.). *De iustitia administrativa in Ecclesia* (pp. 85–96). Roma: Officium Libri Catholici.
- Kaslyn, R. J. (2002). The sacrament of orders: irregularities and impediments – an overview. *The Jurist*, 62, pp. 159–194.
- Laggas, P. R. (1996). The use of canon 1044, §2, 2° in the removal of the removal of the parish priests. *Studia Canonica*, 30, pp. 31–69.
- Montini G. P. (2018). *De Recursus Hierarchicis* (On Hierarchical Recourse). Roma: Pontificia Univeritatis Gregoriana, Facultatis Iuris Canonici.
- Okello Ogutu, J. (2025). Reflection on Irregularity Incurred Due to Amentia and Other Psychic Infirmities. *Biuletyn Stowarzyszenia Kanonistów Polskich*, 35(38), pp. 187–202. <https://doi.org/10.32077/bskp.9692>
- Olivares, E. (1993). Irregolarità (Irregularity). In: C. Corral, V. De Paolis, G. Ghirlanda (Eds.). *Nuovo dizionario di diritto canonico* (The New Dictionary of Canon Law) (pp. 593–595). Torino: San Paolo.
- Ortiz, M. A. (1999). I ricorsi gerarchici (Hierarchical Recourses). In: Gruppo Italiano Docenti di Diritto Canonico (Ed.). *I giudizi nella Chiesa. Processi e procedure speciali. XXV Incontro di studio Villa S. Giuseppe – Torino 29 giugno – 3 luglio 1998* (Judgments in the Church. Special processes and procedures. XXV Study Meeting Villa S. Giuseppe – Turin 29 June – 3 July 1998) (pp. 39–84). Milano: Glossa.
- Pavanello, P. (1999). Irregolarità e impedimenti a ricevere l'ordine sacro (Irregularities and Impediments for the reception of Holy Orders). *Quaderni di Diritto Ecclesiale*, 12, pp. 279–296.
- Woestman, W. H. (1995). Too good to be true? A current interpretation of canons 1041, 1° and 1044, §2, 2°. *Monitor Ecclesiasticus*, 120, pp. 619–629.