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„The protection and defense of the rights of the faithful in canonical penal law”

Summary of the dissertation

The imposition of punishment within the Church's justice system should be combined with concern for the protection of human dignity and safeguarding its fundamental rights, taking into account the pastoral nature of punishment, aimed at strengthening the unity of the Church community. The fundamental right of every human being, and especially the faithful, is the right to justice and the protection of his rights before a court, which is clearly shown in the present dissertation.

The first-class way of leading the faithful to salvation is not to apply penal sanctions. Punishment is a further measure that serves the highest purpose and at the same time the law in the Church, namely the salvation of souls. Despite the fact that the faithful should above all use peace and reconciliation measures, the Christian has the right to defend his rights before the tribunal. The trial is an instrument of defense and recovery of the faithful's personal rights. Being a formal method of enforcing rights, it is also a register of detailed powers.

The dissertation has been divided into four chapters. The first chapter indicates one of the most important rights of the faithful, which is the right to a court. The right of access to the court, as shown in the first chapter of the dissertation, is connected above all with the possibility of having access to an impartial and competent church judge, in order to submit his case to him. The right to a court cannot be solely a theoretical right. It is the Church's commitment to help in the exercise of these rights that the faithful are entitled to seek and defend.

One of the fundamental rights of the faithful is the right to defense. This law precedes any constituted law and is associated with the dignity of the person. Especially in matters concerning the public good, the right to defense is important. Deprivation of the right to defense is the basis for the annulment of the judgment. The defense of their rights in the canonical process may be demanded not only by persons who are a member of the Church, but also by those who belong to him. Every man, not only a baptized person or a Catholic, may bring a complaint. The plaintiff who makes a complaint or another remedy does not have to use professional canonical terminology or refer to specific legal provisions. It is often enough to indicate that he disagrees with the decision issued.

It should be pointed out that in the broad sense all canons included in canonical penal and procedural law serve to defend the accused. A large group of regulations refers directly to the protection and defense of the rights of the faithful. At the same time, the judge is the guarantor of protection of the rights of the faithful and the justice of the whole process. He is obliged to apply the provisions of substantive and procedural law, in accordance with the correct canon law, taking into account all factual circumstances, including those favorable to

the accused. The stability and independence of the office of judges serves to defend the rights of the faithful. In addition, the defense of the rights of the faithful manifests itself in a lawyer's coercion, the obligation to obtain the accused's consent to the resignation of the instance, or even in the right of the accused to be the last to discuss the case. Finally, the accused person is protected during the trial by the presumption of innocence, the principle of objective truth and the obligation to give an acquittal if the accusation is unfounded.

If the ecclesiastical authority recognizes the insufficiency of pastoral care, it may decide to apply a penalty to the perpetrator of the crime. It is then up to the Ordinary to decide whether to initiate the process using the administrative or judicial procedure, after a preliminary investigation, which is of an administrative nature. The dissertation indicates the circumstances that would allow imposing or declaring a sentence by extrajudicial decree, if justified reasons prevent the trial being conducted. The general rules for administrative decrees should be used in the penal-administrative procedure. It is extremely important that the application of the penalty is not possible by extrajudicial decree, without providing defense to the accused. The dissertation pointed out to the fundamental differences between the procedures, with the intention of a holistic view on the issue of the selection of a penal or penal-administrative procedure.

The first chapter of the study presents the principles of the penal-law process, which is the most appropriate response to the need to defend the rights of the faithful. Particular attention was paid to the special standards of the penal process and the institutions used in them. In particular, they included: the presence of a promoter of justice in the penal trial, the right to help a lawyer, the right of the accused to the last word in the discussion of the case, the prohibition of compelling the accused person to take an oath and to confess. Finally, let us note that the accused, who was forced to defend his rights and look for evidence of innocence, has the right to demand an acquittal. Just prosecuting yourself may threaten to lose your reputation in the community and even lose confidence in the administration of justice in the Church.

The second chapter of the present dissertation is devoted to the use of pastoral and reconciliation measures and the issues of the presence of a lawyer in the penal and penal administrative proceedings. Through amicable means, the legislator aims to enable the parties to reconciliation, encouraging them to negotiate, mediate, seeking a settlement or submission to the arbitral tribunal. An extremely important solution for the exercise of the rights of the faithful is the possibility of administrative mediation in the event of a believer being wronged by an administrative decree. Avoiding a dispute and seeking a common solution by using serious and prudent people gives an opportunity to quickly resolve the conflict and foster a better understanding of the faithful with the church's administrative bodies. The study also draws attention to the possibility of using mediation in matters other than administrative disputes. In the second chapter of the dissertation, the issue of mediation in penal matters was pointed out to a wider extent.

It should be noted that the presence of a lawyer in a penal trial serves to implement the right to defense. Regardless of whether the appointment of a lawyer is obligatory or optional, its presence is useful and recommended. Some of the lawyer's regulations are referred to the

legal representative, but these functions must be distinguished. The lawyer, in contrast to the proxy who is only the legal representative, analyzes the factual and legal status of the case and provides help to the party at every stage of the process.

The third chapter of this study indicates the possibility of lodging legal remedies. In the penal proceedings, we include ordinary measures, such as appeals, and extraordinary ones, that is *restitutio in integrum*. The motion for the annulment of a judgment may be classified as both ordinary and extraordinary measures against the judgment. The most far-reaching remedy is the action for annulment of the judgment. It concerns a judgment with a legal defect. The dissertation indicated the reasons for the nullity of the removable and irremovable invalidity of the verdict. However, while the action for annulment of the judgment removes formal errors, the appeal removes the judgment directly, aimed at correcting the erroneous factual or legal findings. The primary purpose of the appeal is to demand the removal of the harm which the party suffered by issuing a lower court judgment. In the case of appeals, there are no causal restrictions, as in the case of lodging a motion for the annulment of a judgment or an extraordinary *restitutio in integrum* recourse. The study presents the possibility of appealing against a judgment partially favorable to the accused. Extraordinary ways to undermine a final decision include *restitutio in integrum*. In spite of the external correctness of the judgment, the party may request restoration to the previous state if the judgment is unfair from the reasons specified and indicated by the legislator.

The third chapter of the dissertation also contains a discussion of a claim for damages. It constitutes an intervention of a third party who in the disputed claim may demand compensation for damage both from the perpetrator of the crime and from the person currently in possession of the lost item. A complaint at issue for damages is recognized according to its nature in a different procedure than a penal complaint. The independence of a penal complaint and a claim for damages is particularly evident at the appeal stage. Even if it was not possible to appeal in a penal case, it is possible to appeal in the matter of damages.

The fourth chapter of the dissertation pointed out to legal measures that the faithful can apply against acts issued by administrative bodies in the penal-administrative procedure. The hierarchical recourse (appeal) is one of them. It constitutes a means of appeal aimed at resolving the dispute. The party submitting the recourse should be subjectively convinced that it is harmed by the administrative act issued. The purpose of the recourse is to re-examine the matter by the higher hierarchical superior and to revoke or modify the challenged decree. However, the defense of subjective rights in the penal-administrative procedure is much more difficult than in a penal trial. The party who brings the recourse is in a hierarchical position of dependence on the defendant. A specific response to inadequate protection and defense of subjective rights in the administrative procedure was the establishment of the second section of the Supreme Tribunal of the Apostolic Signature. It recognizes legal disputes between faithful and executive organs. The judicial-administrative recourse appears as an effective remedy. The separation of the judge and the parties involved in the dispute should be judged positively.

The dissertation presents in detail motives, subject and entities that have the opportunity to submit appeals, both hierarchical recourse and recourse to the second section of

the Apostolic Signature. It also pointed out to the effects of lodging the appeals and the final decisions that may be made as part of the appeal recognition in the penal-administrative proceedings. Finally, the fourth chapter contains the description of the recourse for damages. The issue of repairing damages applies not only to judicial-administrative recourse, but also to hierarchical recourse. The issue of repairing the damages is settled, if an application for repairing is submitted. In the event of a recourse for compensation, the damage must be caused by the release of an illegal act. It is necessary to have a causal link between the violation of the sphere of subjective rights and the damage that has occurred. In addition, it is not possible to request compensation for damage if the requesting party does not request that the act be revoked or amended. The obligation to repair damage is absolute and must therefore be met unconditionally. The method of repairing damages should be adequate to the manner of its creation and its nature.

The aim of the dissertation is to sensitize to the issues of protection and defense of the rights of the faithful in canonical penal law. The study presents, in a broad context, the issue of protection and defense of the rights of the faithful in canonical penal law, addressing the issues of both the penal process and the penal administrative procedure. It includes the presentation of the rights of the faithful from the perspective of both the penal process and the perspective of church administrative law, extending this subject to issues related to conciliation and the possibility of the presence of a lawyer under the discussed procedures. The study clearly indicates the relevance and purposefulness of conciliation and pastoral measures, as they most often allow solutions that are beneficial to both sides of the dispute. The dissertation also contains indications regarding to possible deficiencies in the exercise of the rights of the faithful, by referring to institutions used in secular law, whose canonization would be possible, taking into account the different legal systems. The study is an attempt to show the most important content and the most sensitive aspects, areas or institutions that relate to the rights of the faithful in canonical penal law.