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# QUESTIONING OF A SUSPECT IN THE PRELIMINARY INVESTIGATION BASED ON SELECTED CANONICAL LEGAL PREMISES

**Abstract.** One of the most challenging aspects of the ordinary in a preliminary investigation is determining whether and when to inform the accused. It is therefore permissible to exclude the activity of interrogation, although this is not mandatory. This issue has not been definitively resolved in legal prescripts and doctrine. The objective of this paper is to provide an explanation of the legal canonical premises that govern the questioning of the accused. This leads to the question of whether and when it is appropriate to interrogate a suspect during a preliminary investigation. The absence of a definitive resolution gives rise to a specific practical challenge. How can the need to collect comprehensive data during an investigation be met while avoiding the necessity of interrogation of the accused? In the absence of interaction between the alleged perpetrator and the investigator, how can the question of their culpability be resolved? The article proceeds to illustrate the canonical legitimacy of the interrogation on the basis of the specific objectives pursued during the preliminary investigation.

**Keywords:** preliminary investigation; interrogation; protection of good name; personal dignity

## INTRODUCTION

A preliminary investigation is an administrative activity carried out in accordance with the relevant legislation. The objective of the preliminary investigation is to examine the facts, circumstances, and imputability of the perpetrator. The ordinary is responsible for initiating preliminary investigations, which entail gathering evidence and questioning of the persons who have

knowledge pertinent to the matter under investigation.[1] The legislator has ruled that a suspect is precluded from acting as a witness in his case.[2] In the preliminary investigation, however, they indicate the potential for a questioning procedure.

The most recent document published by the Dicastery for the Doctrine of the Faith, entitled *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*, does not provide a definitive resolution to the issue at hand. It states: "Given the sensitive nature of the matter (for example, the fact that sins against the sixth commandment of the Decalogue rarely occur in the presence of witnesses), a determination that the notitia lacks the semblance of truth (which can lead to omitting the preliminary investigation) will be made only in the case of the manifest impossibility of the commission of a delict according to the norms of canon law" (no. 18).[3] The question of whether a suspect should be notified and questioned during an investigation has yet to be definitively resolved within doctrine.[4] Nevertheless, if there is a possibility of questioning, it is necessary to determine the grounds on which this can or should be done. The question thus arises as to whether and under what circumstances it is appropriate to question a suspect during the preliminary investigation.

## 1. THE NEED TO ASCERTAIN THE TRUTH IN THE PRELIMINARY INVESTIGATION

The preliminary investigation is not a trial, nor does it seek to attain moral certitude as to whether the alleged events occurred. It serves: 1) to gather data

[1] See P.R. LAGGES, *Elements of the Preliminary Investigation*, [in:] *Advocacy Vademecum*, ed. Patricia M. Dugan, Montréal 2006, p. 313-342; E. FRANK, *The Preliminary Investigation in the Light of the CDF Vademecum*, "Studies in Church Law" 15 (2020), p. 51-71; L. SABBARESE, *L'indagine previa*, Cinisello Balsamo 2023.

[2] *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25 January 1983), AAS 75 (1983), pars II, p. 1-317. English text is available on the Vatican website. According to can. 1550 § 2, 1°, the following are considered incapable: the parties in the case or those who stand for the parties at the trial, the judge and the judge's assistants, the advocate, and others who assist or have assisted the parties in the same case. For further considerations on this, see P.R. LAGGES, *El Proceso Penal. La investigación preliminar del c. 1717 a la luz de las Essential Norms*, "Fidelium Iura" 13 (2003), p. 104.

[3] Dicastery for the Doctrine of the Faith, *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics* (ver. 2.0; June 5, 2022), "Communicationes" 54 (2022), p. 161-193 [hereinafter: *Vademecum*].

[4] This topic should be intended for further exploration. Cf. LAGGES, *El Proceso Penal*, 106.

useful for a more detailed examination of the notitia de delicto; and 2) to determine the plausibility of the report, that is, to determine that which is called *fumus delicti*, namely the sufficient basis both in law and in fact so as to consider the accusation as having the semblance of truth (*Vademecum* 33). From a purely formal standpoint, it might be worth considering whether questioning the suspect is necessary. Moreover, the doctrine of canon law does not take a purely formalistic approach. In this situation, it would be beneficial to pursue the material objectives indicated by the law throughout the system of canon law and in individual activities. In the context of a preliminary investigation, they can assist in establishing a moral certainty about the course of events that are the subject of the report. The above-mentioned *Vademecum* details specific objectives: to gather data useful for a more detailed examination of the *notitia de delict*; to determine that which is called *fumus delicti*, namely the sufficient basis both in law and in fact so as to consider the accusation as having the semblance of truth (*Vademecum* 33). As the document indicates, it is of the utmost importance that the information gathered during an investigation be taken with the utmost thoroughness. This, in practice, entails acting to cover the whole case without omitting any useful evidence; "the important thing is to reconstruct, to the extent possible, the facts on which the accusation is based" (*Vademecum* 34). Those who are not in favour of questioning the suspect during the investigation may suggest that, as has already been mentioned, the investigation is not a criminal trial and that assessing the likelihood of a crime does not require statements from the accused. Nevertheless, if a case requires a comprehensive investigation, it would seem that the suspect's knowledge could be a valuable piece of information for further proceedings.

Both the criminal trial and the preliminary investigation should be conducted in accordance with the ultimate objective of the trial, which is to arrive at the truth.[5] The very concept of *iudicium poenale* means that the ultimate goal of the proceedings is to make a judgement about something that is debatable, doubtful, and concerns a criminal matter. It ceases to be so when the truth is found, and activities are undertaken from the outset with the intention of achieving that very objective. The preliminary investigation should not be seen as a mere preparatory stage for subsequent activities that will allow the truth to be known but as a genuine engagement with the matter at hand. Both at the sentencing stage and the preliminary investigation, moral certitude is to be achieved (*Vademecum* 33) as to whether the alleged events occurred. In the

[5] Cf. M.J. ARROBA CONDE, *Relación entre las pruebas y la comprobación de la verdad en el proceso canónico*, "Anuario de derecho canónico" (2012), no. 1, p. 12.

case of a preliminary investigation, this is certitude regarding the veracity of the information about a criminal act, but also the objective truth about the crime in question – understood as broadly as it can be known at a given stage of the procedure. The truth about the likelihood of a crime being committed, or the certitude of this fact, is reached on the basis of at least a partial truth about the crime itself. It is also important to note the difference between truth and certitude. The first concept pertains to the mental clarity, whereas the second refers to the mental state that is free from any doubt or hesitation and is capable of accepting a judgement as true.[6]

In light of the aforementioned principle, which emerges as the most crucial among all other procedural requirements, it is unjust to exclude the accused, who is frequently the one who knows the whole truth about crime. In accordance with can. 1728 § 2, "the accused is not bound to confess the delict nor can an oath be administered to the accused." Nevertheless, the confrontation of the statement made by the accused with any other evidence can considerably strengthen the moral certitude of the ordinary with regard to the question of whether a criminal act has been committed.

The questioning of the suspect may lead to a confession or an explanation in accordance with can. 1530. Nevertheless, it should always aim to expose the truth. In the aforementioned provision, the legislator set forth the following: "The judge can always question the parties to draw out the truth more effectively and indeed must do so at the request of a party or to prove a fact which the public interest requires to be placed beyond doubt." Any offence causes public harm and violates the social order. As such, its commission is considered to be contrary to the public interest, as stated in the cited can. 1530.[7]

It should be noted that the term 'semper' used in can. 1530 is not unanimously interpreted by canonists. Michael P. Hilbert, for instance, considered that a judge could question the parties at any time in the course of evidence proceedings. The author limited the possibility of questioning the accused to a specific point in the judicial process.[8] Juan J. García Faílde expressed a different opinion. According to him, 'semper' means that the judge can question

[6] Cf. M. TARUFFO, *La semplice verità. Il giudice e la costruzione dei fatti*, Bari 2009, p. 106. Truth is absolute. It does not allow for gradations; it is either true or false. Certainty is different. It is defined as a gradation of truth, and it allows for different gradations. "Firma intellectus uni pati contradictorii sine ulla formidine errandi" – A. VAN DUIN, *De impedimento impotentiae psychicae in iure canonico*, Roma 1954, p. 165.

[7] Cf. J. BERNAL, *Aspectos del Derecho penal canónico. Antes y después del CIC de 1983*, "Ius Canonicum" (2009), no. 98, p. 383-384.

[8] Cf. M.P. HILBERT, *La dichiarazione delle parti nel processo matrimoniale*, "Periodica" 84 (1995), p. 740-741.

the accused at any time.[9] Grzegorz Leszczyński supported the latter's opinion, justifying his position on the "significance and importance of the parties' statements for the attainment of the truth."[10] Patrick R. Lagges pointed out an important circumstance. Canon 1530 requires a statement from the accused in any situation where the common good is at stake. The procedural moments of finding out the truth are then not distinguished.[11] If can. 1530 applies to the preliminary investigation, the common good should be the focus of ecclesiastical authority both in the criminal trial and during the investigation. In both cases, it is the same good that has been violated as a result of the offence. In both cases, action is being taken to uncover the truth about the crime.

In agreement with the positions of García Faílde, Grzegorz Leszczyński and Patrick Lagges, it should be stated that a suspect should be questioned in the course of the preliminary investigation. Its probative value in a trial is subject to the judge's discretion, which should take into account the other circumstances of the case (cf. can. 1536 § 2), just as in the case of an extrajudicial confession introduced into the trial (cf. can. 1537). As an exception to can. 125 § 2, a confession or other statement of a party is deprived of all force if it is shown that it was made due to an error of fact or extorted by force or grave fear (cf. can. 1538). The questioning can reveal the suspect's reaction to the allegations made against them, which they may be learning about for the first time. Furthermore, it is crucial to consider this aspect when assessing the probability of news regarding an offence being reported, which is a primary objective.

Tadeusz Pawluk asserted that, while a preliminary investigation is an administrative act, it is also "an integral part of the penal process".[12] An alternative perspective was put forth by Myriam Cortés Diéguez, who asserted that the investigation should not be considered a part of the penal process, as it possesses a distinct pastoral character. According to the author, it is not intended to initiate a penal process but to assist the ordinary in fulfilling his role as a shepherd.[13] It is beyond doubt that this is not a phase of the penal process. Nevertheless, it is not feasible to separate the penal and pastoral dimensions. The preliminary investigation, which is conducted in cases where it can be

[9] Cf. J.J. García Faílde, *Tratado de Derecho procesal canónico*, Salamanca 2005, p. 178.

[10] Cf. G. Leszczyński, *Wartość dowodowa confessio iudicialis w świetle Mitis Iudex Dominus Iesus papieża Franciszka*, "Prawo Kanoniczne" (2015), no. 4, p. 124-125.

[11] Cf. Lagges, *El Proceso Penal*, 106.

[12] Cf. T. Pawluk, *Prawo kanoniczne według Kodeksu Jana Pawła II*, vol. 4, *Doczesne dobra Kościoła, sankcje w Kościele, procesy*, Olsztyn 2016, p. 377.

[13] M. Cortés Diéguez, *La investigación previa y el proceso de administración penal*, "Revista Española de Derecho Canónico" 70 (2013), p. 518.

reasonably supposed that a crime has been committed, is intended to initiate a penal process. It is therefore an integral part of penal proceedings since the principle of ascertaining the truth is generally applicable. It is clear that putting it first, even before the psychological well-being of the accused (who should be given specialist care at a difficult time in his or her life), is objectively always acting for the good of the accused in procedural, moral, and pastoral terms. Due to his or her difficult psychological situation, however, the accused is often unable to admit this subjectively. Pope Francis was clear in saying that a lack of understanding of the intimate relationship between charity and penal discipline in the Church has caused significant harm. He asserted that circumstances and justice require a nuanced approach to these matters. The canonical sanction itself has been called a "salutary remedy" that "seeks above all the good of the faithful".[14] A Christian faithful is also an offender who, as a result of committing a criminal act, has not ceased to be one. The pastoral ministry of the Church, on the other hand, affects the offender through the imposition of a penalty as a means of atonement for the acts committed.

One of the important objectives of the preliminary investigation is to determine imputability. It is presumed that all offenders are imputable. Nevertheless, the maintenance of this presumption requires the occurrence of an interaction between the offender and the investigator. Already then, disturbances affecting the understanding of what is commanded and forbidden or difficulties in adapting one's behaviour to the requirements of the law should be assessed.

## 2. PROTECTION OF THE GOOD NAME INTERNALLY

According to can. 1717 § 2, care must be taken so that the good name of anyone is not endangered from this investigation. The *Vademecum* clarifies that the above obligation applies not only to the alleged victim and witnesses but also to the suspect. The document recalls that the good name is one of the rights of the faithful stipulated by can. 220. It is undisputedly accepted in doctrine that the protection of the good name encompasses defamation, i.e.,

[14] FRANCIS, Apostolic constitution *Pascite gregem Dei*, Reforming Book VI of the Code of Canon Law (23 May 2021), AAS 113 (2021), p. 535-536. English text is available on the Vatican website.

honour in its external aspect.[15] The literature also considers the problem of protection in terms of internal.[16] In the view of Winfried Aymans, the material scope of the protection of the good name includes not only good fame, reputation, and good opinion but also the personal dignity to which every human being is entitled.[17] Francesco Romano adds that the canonical system considers the offence of defamation in the context of the Church's concern for the common good. A violation of the individual's dignity implicates the entire Church, which bears witness to the suffering and damage inflicted upon the transcendent order.[18] Although the rights to the protection of external opinion and internal honour are distinct, they are safeguarded by a single provision, which may be considered to be two sides of the same coin.[19] The second reality, which may be termed "inner reverence", represents a conviction held by each individual regarding their own personal dignity and self-esteem.[20]

There is no definition of good name in the 1983 Code. In light of the above, it is possible to define the *ratio legis* with due reference to historical and systemic interpretation.[21] In the conciliar constitution *Gaudium et spes*, the Council Fathers discussed the right to a good name and respect.[22] Pope John XXIII put the problem in the same way in his encyclical *Pacem in terris*.[23] Respect is, in its essence, a relationship – a relationship towards another for the sake

[15] For more consideration see P. SKONIECZNY, *La buona fama: problematiche inerenti alla sua protezione in base al can. 220 del Codice di Diritto Canonico latino*, Roma 2010; S. SANDRI, *Il diritto alla buona fama*, Roma 2002; A. PEREGO, *La buona fama nella vita ecclesiale e la sua protezione nell'ordinamento canonico*, Bari 2003.

[16] In the second part of can. 220, the legislator stated, that "No one is permitted to harm illegitimately the good reputation or her own privacy."

[17] Cf. W. AYMANS, *„Munus" und „sacra potestas"*, [in:] *Les Droits Fondamentaux du Chrétien dans l'Eglise et dans la Société. Actes du IVe Congrès International de Droit Canonique*, ed. E. Corecco, N. Herzog, A. Scola, Fribourg Suisse 1981, p. 200-201.

[18] Cf. F. ROMANO, *Dimensione pubblica ed ecclesiale del diritto alla buona fama e la sua tutela penale nei cann. 220 e 1390 §§ 2-3 del CIC*, "Teresianum: Rivista della Pontificia Facoltà Teologica e del Pontificio Istituto di Spiritualità *Teresianum*" (2008), no. 2, p. 285.

[19] Cf. P.M. RODRÍGUEZ, *Consideraciones sobre la protección del derecho a la buena fama en Derecho canónico*, "Stato, Chiese e pluralismo confessionale" 6 (2022), p. 64.

[20] Cf. Á. RODRÍGUEZ LUÑO, *La difamación*, Madrid 2015, p. 27-30.

[21] Cf. P. SKONIECZNY, *Pojęcie dobrego imienia (bona fama) w Kodeksie prawa kanonicznego z 1983 r. Jana Pawła II na podstawie kan. 220*, "Prawo Kanoniczne" (2009), no. 1-2, p. 76-80.

[22] Cf. VATICAN II, Pastoral constitution on the Church in the Modern World *Gaudium et spes* (7 December 1965), AAS 58 (1966), p. 1025-1115. English text is available on the Vatican website.

[23] Cf. JOHN PAUL XXIII, Encyclical letter on establishing universal peace in truth, justice, charity, and liberty *Pacem in terris* (11 April 1963), AAS 55 (1963), p. 257-304. English text is available on the Vatican website.

of being considered valuable and worthy of the highest attention. The fundamental motivation for such an evaluation of every individual should be their inherent dignity.[24]

The aforementioned approach to framing the issue in the official documents of the Church provides a rationale for establishing a connection between the protection of reputation in an external sense and human dignity in an internal sense. This is further supported by the explicit statements in two other canons in Title I, Part 1, Book II of the 1983 Code. In can. 212 § 3, the legislator mentions respect towards pastors and attentive to common advantage and the dignity of persons, while can. 208 refers to equality as to the dignity of all the Christian faithful. The regulations set forth in this section of the Code can be considered to be of a "constitutional nature".[25] On the basis of can. 220 and in accordance with can. 1717 § 2, the preliminary investigation must be taken so that the good name of anyone is not endangered from this investigation. The personal dignity of the suspect is protected by the law and an essential element of this is the questioning. Respect for the suspect's reputation precludes any attitude and any words that make it likely that unjust harm will be caused.[26] In terms of the category of harm, it can be understood that the suspect was prevented from addressing the suspicions in the course of the preliminary investigation. Guaranteeing questioning removes fears of the activity being conducted without the suspect and is a guarantee of the principle of truth-seeking.

In accordance with can. 1717 § 1, "whenever an ordinary has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability." From the very beginning, taking action should be motivated by a state of things that Patrick Lagges described as the "fumus of truth".[27] Truth is realised through the elements that make up reality, and in this case it is about establishing the facts, circumstances and the offender's imputability. It is imperative that the preliminary investigation and subsequent penal process be conducted in close connection with the Christian faithful's natural right to demand justice from the ecclesiastical authority. It is not possible to discuss the dignity of the human person without ensuring that each individual is granted their rightful entitlements. Abandonment of questioning of the suspect

[24] Cf. M. STAFFEN, M. ARSHAKYAN, *About the Principle of Dignity: Philosophical Foundations and Legal Aspects*, "Seqüência Estudos Jurídicos e Políticos" 75 (2017), p. 46-47.

[25] SKONIECZNY, *Pojęcie dobrego imienia*, 78.

[26] Cf. RODRÍGUEZ, *Consideraciones sobre la protección*, 97.

[27] LAGGES, *El Proceso Penal*, 103.

motivated by concern for his psychological well-being,[28] practiced in the past expresses the so-called concept of emotional justice.[29] It is realised when truth gives way to emotional considerations. Canon law, as a rule, should be associated with concepts combining rationality with emotionality. This is because equity is allowed as an "emotional correction" of justice that is too harsh with its rational coldness. However, canonical penal law itself has moved closer to rationalist conceptions of justice that recognise respect for truth as a necessary condition for justice.[30]

In can. 1717 § 2, the legislator upholds the natural rights whose source is personal dignity. Among the most fundamental rights pertaining to the status of the suspect is the right to personal and integral development, with specific reference to the right to the truth. These natural rights should be guaranteed to the suspect in the course of the investigation, firstly by informing him of the proceedings in progress and secondly by carrying out the act of questioning. In this way, the conditions are created in ecclesiastical justice for a meta-legal personal progression built on a foundation of truth. Legal acts in a preliminary investigation, including interrogation, should remain at the service of all that can and should be done in the conscience of the suspect if, as Francesco Romano, already cited, stated, the harm caused by the crime concerns a transcendent order.[31]

The final document summarising the first session of the Synod on synodality noted that many bishops face the difficult task of reconciling the role of father with that of judge. "The appropriateness of assigning the judicial task to another body, to be specified canonically, should be explored."[32] The issues highlighted are a consequence, among other things, of the still insufficient deepening of the awareness and importance of the power of punishment in the Church. Pope Francis recalled on the occasion of the promulgation of Book

[28] The abandonment of a hearing is often justified on the grounds that the accused could influence the conduct of the investigation, for example by destroying evidence. F. Iannone was definitive in his explanation of why there was no obligation to question the suspect at the International Scientific Conference "La giustizia penale nella Chiesa. Tutela della vittima e garanzie dell'imputato" (10-11.04.2024, Pontifical University of the Holy Cross in Rome).

[29] As Chaim Perelman correctly observed, the adoption of this concept could result in the ridicule of the judiciary if it were to make a mockery of the truth in the name of dubious and obscure considerations. C. PERELMAN, *Logika prawnicza. Nowa retoryka*, Warszawa 1984, p. 193.

[30] Cf. J.I. ARRIETA, *El proyecto de revisión del libro VI del Código de Derecho Canónico*, "Anuario de Derecho Canónico" (2013), no. 2, p. 224.

[31] Cf. ROMANO, *Dimensione pubblica*, 285.

[32] Synthesis report on the 16th Ordinary General Assembly of the Synod of Bishops, *A Synodal Church in Mission*, Roma 2023, no. 12i.

VI that charity and mercy require that it is the bishop who devotes himself to straightening out "what can be distorted".[33] In turn, the conciliar constitution *Lumen gentium* called the "exercise of judgement" by bishops "a sacred right and duty before the Lord".[34] It is therefore not doctrinally justifiable to exclude bishops in any way from the punitive power vested in them. One way to resolve the difficulties is to protect the suspect's reputation internally by guaranteeing the natural right to know the truth and to express it. Indeed, the situation of a bishop who would conceal from his subordinate a circumstance of great moral and canonical importance, such as the conduct of a preliminary investigation into his case, must be assessed as problematic. The notification of the investigation and the questioning of the suspect are to be understood as the performance, in disciplinary terms, of the duties imposed by the Council Fathers: "Let [the bishop] not shy away from listening to his subjects, whom he takes into his care as his own children and encourages to work diligently with himself" (LG 35). Urgent interaction must take place when it is the bishop's duty to thoroughly investigate news of a crime. The care of the cleric cannot be understood as protection from justice, as has been the case in the past, but as, among other things, guaranteeing interrogation in order to awaken the natural inclination to "communicate oneself", which, as Javier Hervada stated, "has its deepest justification in the duty of truthfulness".[35]

## CONCLUSION

An important element in the protection of the suspect's reputation internally is his or her questioning during the preliminary investigation. Protection should include countering all that destroys a good name, reputation, good repute, but also refraining from conducting proceedings without the suspect. Questioning naturally directs the activities towards the truth, even when the suspect does not admit guilt against the facts and circumstances or, paradoxically, speaks untruth. Indeed, both the material truth and the first reaction to the news of the crime are important: commitment to explaining the case, willingness to cooperate, denying guilt against the facts, interpreting the investigation as an action against the suspect, etc.

[33] "Id quod est distortum," PGD, p. 534.

[34] VATICAN II, Dogmatic constitution on the Church *Lumen gentium* (21 November 1964), AAS 57 (1965), p. 5-67.

[35] J. HERVADA, *¿Qué es el derecho? La moderna respuesta del realismo jurídico. Una introducción al derecho*, Pamplona 2011, p. 182.

The hearing provides an opportunity to confront the interviewee with the facts, even before a decision is made to proceed to trial. It creates the conditions for meta-legal personal progression, which can result in standing in truth about one's personal situation. The ecclesiastical justice system should remain at the service of all that can and should be done in the conscience of the suspect. If the suspect has knowledge of the activities taking place and communicates a willingness to face the truth himself, he should be questioned as soon as possible. In other cases, due to the likelihood of unsupported guilt, the suspect should be confronted with all the evidence gathered, i.e. questioned before the investigation is closed. During the investigation, the first attempt should be made to extract knowledge of the perpetration or non-perpetration of a crime from the most important source – the suspect – and the element of psychological surprise, while respecting ethical principles and guarantees of subjective rights, can significantly benefit the establishment of objective truth. In later statements, the accused will have to refer to the statements made during the investigation, even if he or she changes their content.

It should be considered inconsistent, on the one hand, to require scrupulousness in data collection during the preliminary investigation, and on the other hand, the possibility of not questioning the suspect. Similarly, it is questionable to establish the imputability of the alleged offender without interaction between him and the investigator. This situation should be changed by introducing the obligation to question the suspect during the preliminary investigation.

An argument in favour of questioning the suspect during the preliminary investigation is also made by the fact that the subject matter of the judicial proceedings may sometimes be the subject of an extrajudicial process. The penal law of the Church allows certain penal cases to be heard and decided administratively while maintaining the essential requirements of justice. In an out-of-court trial, the accusation and evidence gathered in the preliminary investigation are presented to the accused, giving him the opportunity to defend himself. The evidence gathered in the preliminary investigation should include an out-of-court confession or statement by the accused on the charges against him or her and the evidence gathered.

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## PRZESŁUCHANIE PODEJRZANEGO W POSTĘPOWANIU PRZYGOTOWAWCZYM NA PODSTAWIE WYBRANYCH PRZESŁANEK PRAWA KANONICZNEGO

### Streszczenie

Szczególnie delikatnym zadaniem ordynariusza lub hierarchy w dochodzeniu wstępnym jest zdecydowanie, czy i kiedy powiadomić o nim podejrzanego. Tym samym dopuszcza się pominięcie czynności przesłuchania, jednak się jej nie wyklucza. Zagadnienie to nie zostało jednoznacznie rozwiązane w przepisach oraz doktrynie. Autor podejmuje problem podstaw prawnokanonicznych dla tej czynności. Stawia pytanie, czy i kiedy przesłuchać podejrzanego podczas dochodzenia wstępnego? Brak jednoznacznego rozstrzygnięcia powoduje konkretne problemy praktyczne. Jak pogodzić wymóg gruntowności w zbieraniu danych podczas dochodzenia oraz możliwość nieprzesłuchania podejrzanego? Jak ustalić poczytalność rzekomego sprawcy bez interakcji między nim a osobą prowadzącą dochodzenie? W artykule wyprowadza się kanoniczną zasadność przesłuchania z konkretnych celów realizowanych podczas dochodzenia wstępnego. Autor analizuje problem ochrony dobrego imienia, obejmującą nie tylko reputację i dobrą opinię, ale również godność osobową oraz prawo do wypowiedzenia prawdy.

**Słowa kluczowe:** dochodzenie wstępne; przesłuchanie; ochrona dobrego imienia; godność osobowa