

JOHN OKELLO OGUTU
Tangaza University College
jokello184@gmail.com
ORCID: <https://orcid.org/0009-0007-7110-9950>

SOME REFLECTION ON IRREGULARITY INCURRED *EX DELICTO* DUE TO THE COMMISSION OF HERESY, APOSTASY AND SCHISM

Abstract. This article aims to clarify the differences between a penalty and an irregularity, addressing potential confusion arising from their distinction. According to can. 1041, 2°, individuals who commit the delict of heresy, apostasy, or schism are considered irregular for the reception of orders. While various doctrinal interpretations of this canon exist, this article seeks to elucidate the nature and content of this irregularity.

Keywords: penalty; doctrinal debates; sin; delict; magisterium

INTRODUCTION

The pre-1983 Code legislations, right from the time of the Decretals, classified irregularities into irregularities *ex defectu* and irregularities *ex delicto*, a classification retained by the 1917 Code (cann. 984-988) but later dropped by the 1983 Code. *Ex delicto* irregularities are those incurred due to commission of a delict. *Ex defectu* are those incurred due to a defect in the person. The 1983 Code, not embracing the 1917 classification of irregularities retains insanity and psychological infirmities among those irregularities incurred *ex defectu*, while schism, heresy and apostasy are exclusively described as incurred *ex delicto* (can. 1041, 2°). The rest are simply enumerated as irregularities without any qualification.

A confusion arises when the same Code that abolished the *ex delicto* and *ex defectu* classification of irregularities still qualifies several irregularities as incurred due to the commission of a delict. We can see this in can. 1044 §

1, 3°, where the Code uses the word “delict” to refer to the irregularities of attempted marriage, willful homicide and procured abortion, grave mutilation, suicide, and placing acts of orders while one is not possessing that order. This raises questions on some doctrinal interpretations available in various books and articles. If these irregularities are incurred *ex delicto*, then they can be incurred only when a delict is actually committed. Equally, since only Catholics are subjects of ecclesiastical penalties, then these irregularities can only be incurred by Catholics. On the other hand, if we hold that they are not incurred *ex delicto*, then commission of a delict is not required for them to be incurred. This way, it may affect even those Catholics and non-Catholics who are not subjects of ecclesiastical delicts. The authentic interpretation of can. 1041, 4°-5°, given on 31 May 2016, indicated that the irregularities of homicide, abortion and malicious mutilation affect even non-Catholics.¹

Another concern emerges from the implication of can. 1047, when, in relation to irregularities whose dispensation is reserved to the Holy See, it uses the terms: *factum* in can. 1047 § 1 to refer to cases already introduced in the judicial forum; and *delictum* to refer to cases of attempted marriage, homicide and abortion, besides that of schism, apostasy and heresy which are already incurred only *ex delicto*. Does the legislator intend to convey that these irregularities are to be referred to the Holy See for dispensation only when they are incurred *ex delicto*, and to the Ordinary when they are incurred in other forms?

1. THE IRREGULARITY ITSELF

Commission of the delict of heresy, schism, and apostasy constitute an irregularity for reception and exercise of holy orders as defined by the Code. The definition of heresy, schism and apostasy is given in can. 751 of the 1983 Code. Since this irregularity is incurred *ex delicto*, the commission of a delict, whether occult or public, is technically necessary for the irregularity elaborated in can. 1041, 2° and 1044 § 1, 2° to be incurred, but not just a simple commission of a sin of schism, heresy, or apostasy. The definition of the terms “public delict” and “occult delict” is not found in the 1983 Code, so we seek the appropriate definition from can. 2197, 1° and 4° of the 1917 Code. A delict is said to be public when it has been divulged or has happened in such circumstances that it can be prudently judged that it can and will become known. It

¹ Cf. PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, *Interpretatio authentica ad can. 1041 nn. 4-5 CIC*, 31 May 2016, *AAS* 108 (2016), p. 707.

is occult “materially” when the crime itself is hidden, and “formally” occult when the imputability is hidden. The Holy See reserves to itself the dispensation of irregularity for the reception of holy orders incurred due to the commission of the delict of heresy schism and apostasy when the delict is public. If the delict is occult, the ordinary can dispense from it.

For the exercise of orders received, any cleric who was ordained while irregular for receiving orders due to this irregularity, is irregular also for the exercise of the orders received, whether the irregularity was incurred due to public or occult delict (can. 1044 § 1, 1°). I distance myself from the claim by Geisinger that one who was irregular for the reception of orders due to occult delict of apostasy, schism, and apostasy, is not irregular for the exercise of the orders received.² The general principle is clear that once irregular for the reception of orders, one remains irregular also for the exercise of the order received (can. 1044 § 1, 1°). When one commits these delicts after ordination, one becomes irregular for the exercise of the order received only if the delict is public (can. 1044 § 1, 2°).

2. ELEMENTS OF THE IRREGULARITY

Apostasy, heresy and schism are delicts against faith (*delicta contra fidem*). They undermine the integrity of faith and doctrine proclaimed by the Church. For sacred ministers to whom the care of souls is entrusted, commission of these delicts contradict the very nature of their ministry for they are official teachers of faith and pastors of souls.

Our Lord Jesus Christ, having accomplished his mission on earth, entrusted the deposit of faith to the Church. The Church, with the assistance of the Holy Spirit, has a threefold obligation towards this deposit of faith. It must guard this revealed truth religiously and conscientiously so as to preserve its integrity and purity, and to avoid any reduction, alteration or deformation (1 Tim. 6:20, 2 Tim. 1:14). It must also intimately penetrate it, that is, expound and deepen its meaning, a task that is not always easy and requires appropriate development for its adaptation to the current times and persons, in full authenticity and fidelity. It must announce and expound it in fulfillment of Christ’s mandate: “Go and make disciples of all nations... teaching them to

² See R.J. GEISINGER, *Orders. cc. 1008-1054*, in J. BEAL, J.A. CORIDEN, T.J. GREEN (Eds.), *New Commentary on the Code of Canon Law*, New York: Paulist Press, 2000, p. 1226.

observe all that I have commanded you” (Mt. 28:19-20). In this sacred mission, the Church has the special assistance of the Holy Spirit and Christ himself as Christ promises: “I will be with you always, to the close of the age” (Mt. 28:20). Since the delicts of heresy, apostasy and schism harm the deposit of faith as it is expressed in the Magisterium of the Church, we must understand the levels of the magisterium and the responses required of us as the faithful. Generally, the three levels of magisterial teachings can be classified into two broad categories: the infallible magisterium and authentic non infallible magisterium.

2.1 INFALLIBLE MAGISTERIUM

Two authorities are subjects of infallible magisterium: the Roman Pontiff and the College of Bishops. The Roman Pontiff exercises his personal infallibility when, as the chief shepherd of the universal Church, he proclaims by definitive act a doctrine to be held concerning faith and morals (can. 749 § 1). This teaching on personal infallibility of the Pope was solemnly defined in 1870 by the First Vatican Council (Const. *Pastor Aeternus*, chap. 4). It was then openly confirmed *apertis verbis* by the Vatican II in the Constitution *Lumen Gentium* (25). Therefore, for him to teach infallibly, three conditions must be fulfilled. First, it is necessary that the Pope speaks *ex cathedra*, that is, not as a private person nor even as a theologian, but as the supreme and universal Pastor and Teacher of the faithful, to whom it belongs, by virtue of his office and as the Successor of Peter, to confirm his brothers in the faith (Lk. 22, 32). Second, the object of the teaching must concern faith and morals (primary object), or a doctrine intimately connected to them. Third, the act that establishes the doctrine must be definitive, so that there is no longer any doubt about it, nor any possibility of modification: the act is irreformable, and the doctrine must be believed by the whole Church and forever.

The second subject of the infallible magisterium is the College of Bishops. This body exercises the solemn magisterium when, as doctors and judges of faith and morals, they are gathered together with the Pope in an Ecumenical Council (can. 337 § 1), and declare that a doctrine concerning matters of faith and morals or matters closely connected to that doctrine is to be held definitively by the whole Church. The *ordinary magisterium* takes place when the bishops, although scattered throughout the world, preserving the bond of communion among themselves and with the Successor of Peter, authentically

teaching together with the Roman Pontiff truths regarding faith and morals, agree on the same doctrine, to be held as definitive by the whole Church (can. 749 § 2). In order for a doctrine to be considered infallibly defined, the definition must be clearly evident. If such a definition is unfounded or doubtful, the presumption stands for non-infallibility, until the contrary is proven.

Based on content of the *professio fidei*,³ there are two kinds of truths that are defined by infallible magisterium: divinely revealed truths, and definitively proposed truths closely connected with revealed truths.

2.1.1 Dogma: divinely revealed truths (cann. 749-750 § 1)

The first category contains the divinely revealed truths. Some theologians call them *infallible dogma or definitive dogma*. These are truths found in the Word of God, written or handed down in tradition, and the Magisterium has affirmed to be divinely revealed by a solemn judgement by the Roman Pontiff when he speaks *ex cathedra* or by the college of Bishops gathered together in an ecumenical council, or infallibly proposed for belief by the ordinary and universal Magisterium. They are irreformable. Since these truths are infallible, the assent demanded from us is that we must believe these truths with divine and catholic faith (or theological faith as some documents put it). This assent is based on the authority of the Word of God (doctrines *de fide credenda*).⁴ The obligation of such assent presupposes a twofold concurrent condition: first, that the truth proclaimed in the doctrine is contained in the Word of God written or transmitted by tradition, that is to say in the sole deposit of faith entrusted to the Church. Second, that the truth has been proposed as divinely revealed by the solemn Magisterium of the Church (Pope or Ecumenical Council), or even by its ordinary and universal Magisterium, manifested in fact by the common adhesion of the faithful under the guidance of the sacred Pastors. When truth is simply contained in the Word of God (revelation), and there is no defining intervention on the part of the

³ Cf. CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Professio fidei et Iusiurandum fidelitatis in suscipiendo officio nomine Ecclesiae exercendo una cum nota doctrinali adnexa*, 29 June 1998, AAS 90 (1998), p. 542-551; JOHN PAUL II, Motu proprio *Ad tuendam Fidem*, 18 May 1998, AAS 90 (1998), p. 457-461; CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Doctrinal Commentary on Concluding Formula of 'Professio Fidei'*, 29 June 1998, *L'Osservatore Romano*, Weekly English edition, 15 July 1998, p. 3-4.

⁴ CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction *Donum de veritatis*, 24 May 1990, art. 23, AAS 82 (1990), p. 1559-1560; IDEM, *Doctrinal Commentary*, n. 5.

Magisterium of the Church, it is only “truth of divine faith”. The truths of divine-catholic faith form the various dogmas or articles of faith present in the Church. The theological and juridical consequence of the principle stated is that all the faithful, without exception, must keep away from any doctrine contrary to the defined truth, which is both divine (contained in the Word of God) and Catholic (proposed as divinely revealed by the solemn Magisterium of the Church) (can. 750 § 1).

Whoever obstinately places himself in doubt of or denies these divinely revealed truths is guilty of heresy and is to be subjected to the penalty set aside for the delict of heresy (together with apostasy and schism) in can. 1364 of the 1983 Code, that is, a *latae sententiae* censure of excommunication (can. 1364

§ 1), of which, if the offender manifests a prolonged contumacy (contempt), or when the scandal caused calls for it (can. 1364 § 2), other penalties may be added, and for clerics, even the penalty of dismissal from the clerical state can be imposed.⁵

2.1.2 Truths necessarily connected to divine revelation (can. 750 § 2)

The second category of truths proposed by the infallible Magisterium is the definitively proposed truths regarding faith and morals which are closely connected with revealed truth. These truths are not immediately enshrined in the sacred deposit but are rooted in the primary points of the *depositum fidei* as truths which necessarily flow from them either logically or historically and are needed in order to keep and expound them faithfully. These truths, are a result of the Church’s deeper understanding of her dogmas on faith and morals. They add to the data of faith elements that are not revealed, or which are yet to be expressly recognized as such, even though they may not be proposed as formally revealed. Such truths are defined solemnly and in a definitive way by the Roman Pontiff when he speaks *ex cathedra* or by the College of Bishops gathered in an ecumenical council or they can be taught infallibly by the ordinary and universal Magisterium of the Church as *sententia definitive tenenda*.⁶

⁵ For more on this, see J.O. OKELLO, *Loss of Clerical State and Return to Ministry*, Aguadulce: Círculo Rojo Editorial, 2025, p. 111-122; DICASTERY FOR LEGISLATIVE TEXTS, *Penal Sanctions in the Church, User Guide for Book VI of the Code of Canon Law*, Nairobi: Paulines Publication Africa, 2023, p. 119-120.

⁶ CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Doctrinal Commentary*, n. 6-9.

These truths are also infallible. Every Christian is required to give a firm and definitive assent to these truths. Whoever denies these truths, rejects the truth of the catholic doctrine and is no longer in full communion with the Catholic Church.⁷ Can. 1365 imposes a censure and deprivation of office on those who after receiving a warning from the Holy See or the ordinary do not retract their position. In such a case, additional sanctions mentioned in can. 1336, §§ 2-3 can be added. The most recent definitive teaching of the Magisterium is the teaching on ordination of women. Defined by Saint John Paul II in the Apostolic Constitution *Ordinatio Sacerdotalis*,⁸ after the declaration of the CDF on this matter,⁹ and the confirmation of the definitive status of this teaching in the response to a dubium raised where it confirmed that this teaching has been set forth infallibly by the ordinary universal magisterium and required a definitive assent.¹⁰ Today, revised can. 1379 § 3, which recognises the CDF's efforts to introduce the delict of attempted ordination of women,¹¹ penalizes those who attempt to ordain a woman with the penalty of excommunication *latae sententiae*, reserved to the Apostolic See, and dismissal from the clerical state for the clerics.

2.2 AUTHENTIC NON-INFALLIBLE MAGISTERIUM (CANN. 752-754)

The Magisterium of the Church in matters of faith or morals does not ordinarily assume the definitive character mentioned in can. 749 unless it is defined as such. As a rule, a non infallible magisterium is simpler, less binding, since it does not require the assent of faith determined in can. 750. It is nevertheless an authentic magisterium, imparted by the authority

⁷ See JOHN PAUL II, *Ad tuendam Fidem*, nos. 3, 8; CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Doctrinal Commentary*, nos. 6-9.

⁸ JOHN PAUL II, Apostolic Constitution *Ordinatio sacerdotalis*, 22 May 1994, *AAS* 86 (1994), no. 4, p. 548.

⁹ CONGREGATION FOR THE DOCTRINE OF THE FAITH, Declaration *Inter insigniores*, 19 December 1976, *AAS* 69 (1977), art. 4, p. 99-100. More on this in A. PIOLA, *Donna e sacerdozio. Indagine storico-teologica degli aspetti antropologici dell'ordinazione delle donne*, Torino: Effatà editrice, 2016, p. 78-114.

¹⁰ CONGREGATION FOR THE DOCTRINE OF THE FAITH, Responsum ad propositum dubium, 28 October 1995, *AAS* 87 (1995), p. 1114.

¹¹ CONGREGATION FOR THE DOCTRINE OF THE FAITH, Decretum generale de delicto attentatae sacrae ordinationis mulieris, 19 December 2007, *AAS* 100, no. 6 (2008), p. 403. See also CONGREGATION FOR THE DOCTRINE OF THE FAITH, Motu proprio *Sanctitatis Sacramentorum Tutela*, 15 July 2010, *AAS* 102 (2010), art. 5, 1°-3°; the latest edition of *Sanctitatis Sacramentorum Tutela*, 11 October 2021, art. 5, 1°-2°, can be found in "Communicationes" (2021), no. 53, p. 437-445.

constituted by Christ in the Church and which has received the mandate to teach from the divine Master (Lk. 10, 16; Mk. 16, 15-16). It deserves all our respect and our homage. Cann. 752-753 are dedicated to this magisterium, devoid of the charism of infallibility, and, clarifying its value, they appropriately consider not only the magisterium of the summit, that is, of the Roman Pontiff and of the College of Bishops, but also that of the bishops, both individually and gathered in episcopal conferences or in particular councils.

The magisterium of the Roman Pontiff and of the College of Bishops in matters of faith or morals or of truths closely connected with it, even if it does not intend to define a doctrine with a definitive act, obliges the faithful to show religious obedience (submission) of intellect and will to this doctrine, carefully avoiding anything that contravenes it. A simple external adhesion is not enough: internal adhesion, of the intellect and the will, is also and above all necessary (can. 752). This however, does not prevent the truth stated in this authentic magisterium from being appropriately deepened, according to cann. 218 and 386 § 2.

Individual bishops and bishops gathered in episcopal conferences or in particular councils, in communion with the Roman Pontiff and with the other members of the College of Bishops, when exercising their teaching office, are also authentic instructors and teachers of the faith to those entrusted to their care. Even though their teaching is not infallible, it is a magisterium that has every guarantee, and to which the faithful are required to adhere with religious obedience (submission) of mind, even if it lacks the absolute and unconditional character of the assent of faith (can. 753).

Equally, the ecclesiastical magisterium, often in enunciating a doctrine or in condemning erroneous opinions, is expressed through constitutions or decrees, which obviously assume a more manifest normative character. The faithful are obliged to observe such constitutions and decrees, especially those promulgated by the Roman Pontiff or the College of Bishops. Decrees and declarations can also be issued by individual bishops and episcopal conferences, within the scope of their own competence, and even the dicasteries of the Roman Curia, especially, in matters of faith.

3. PROHIBITED CONDUCT

Three penal conducts that gravely wound the faith sanctioned by the canon at hand are heresy, apostasy and schism. Heresy and apostasy directly contravene the faith while schism undermines the unity of the Church. The reception of baptism is presumed, since, if baptism is lacking, the three delicts do not exist, hence no irregularity is incurred.

1. Heresy is defined as an obstinate denial or doubt after baptism, of truth of faith which must be believed by divine and catholic faith (can. 751). As we have seen above, all those truths which are contained in the written Word of God or in the tradition and which the Church has proposed for acceptance as revealed by God, whether by solemn declaration or through her ordinary and universal magisterium must be believed by divine and catholic faith (*fide divina et catholica*). To pronounce a solemn declaration is part of the prerogatives of the Roman Pontiff or College of Bishops in union with the Roman Pontiff gathered in an ecumenical council or scattered throughout the world in communion with him. No doctrine is to be considered as dogmatically defined unless this is evidently proven. In other words, a doctrine is dogmatic when it has been *infallibly declared* by the Church to be revealed by God, and any obstinate denial or doubt of this truth which must be believed by divine and catholic faith (*de fide divina et catholica*) by a baptized person is heresy. Under this *facti species*, do not fall the doctrines which one knows to have been revealed by God, but which have not been declared by the Church as such by a definitive act, nor does it apply to those which the Church teaches without exercising her infallible authority upon them. If a doctrine is not a dogma to be believed *de fide divina et catholica*, a person is not a heretic for denying or doubting it, though such denial or doubt may constitute a grave sin. Equally the truths concerning faith or morals proclaimed by the magisterium of the Church which are not proposed as infallible, that is, as dogmas of faith, do not fall within the object of the penal conduct herein.

For heresy to arise, one must have obstinately denied or doubted the truths of faith which must be embraced by divine and catholic faith. One is said to have denied such truths when he or she deliberately and consciously contests the dogma or opposes the truth about the dogma. One is said to have doubted the truth when manifesting the doubt about the dogma in such a way that they do not actually seek the clarity about it, but rather doubt it as it is defined. The doubt ought to be a positive doubt, that is, it must involve the person doubting

objectively what the Church proposes to be believed by Catholic faith either because the person is not convinced of the truth, or because the evaluation of the Church does not convince him or her or does not coincide with what they think.¹² Heresy is committed when this denial or doubt of the truth to be believed by divine and catholic faith is obstinate. That is when an element of contumacy is present. The law demands the presence of obstinate denial or doubt, that is, the doubt or denial must be fully conscious, voluntary, irreducible, from which one obstinately does not intend to withdraw. Heretical doubt is of one who, consciously, suspends his adherence or his assent. This doubt is not to be confused with the difficulties that arise in the mind in deepening the faith.

Therefore, with the presumption that the truth is known well by him who denies or doubts the revealed truth of faith, the delict does not affect those who find themselves in the situation of material heresy because they do not possess full knowledge of the object of faith, but rather those in formal heresy, because they are well informed and they willingly and voluntarily doubt or deny the revealed and defined truth. Therefore, one who incurs such a delict is a baptized Catholic or one received into the Catholic Church. It excludes all persons who are not baptized in the Catholic Church or who have not been received into it.

2. Apostasy is a total repudiation of the Christian faith. With apostasy, one falls away entirely from Christian faith. Such a repudiation of Christian faith must be total, since if the repudiation is partial, it becomes a heresy, not apostasy. A simple abandonment of religious practices is not sufficient to constitute a delict of apostasy. This delict may be committed when a Christian person affirms publicly that he or she does not believe in the divinity of God, or when they openly profess materialism or atheism of which their open membership or subscription to an atheistic sect or movement can be proven in the external forum. Equally, it may be committed in cases where a Christian person joins a non-Christian religion whose faith tenets are incompatible with Christianity such as Buddhism or Islam.¹³ However, passing from one Christian sect to another may entail heresy or schism but not apostasy. Abandonment of Catholic Church by formal act, however, constitutes both apostasy, heresy, and schism since one breaks all bonds of communion with

¹² See A. CALABRESE, *Diritto penale canonico*, Cinisello Balsamo: Edizione paoline, 1990, p. 248.

¹³ See PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Circular letter *Actus formalis defectionis ab Ecclesia Catholica*, "Communicationes" (2006), no. 38, p. 170-172; B.F. PIGHIN, *Diritto penale canonico*, Marcianum Press, Venezia 2008, p. 304.

the Church, except that of baptism. Likewise, apostasy is committed when one intentionally and knowingly repudiates the faith.

3. Schism is the withdrawal of submission to the Supreme Pontiff or from communion with the members of the Church subject to him. This delict occurs when a baptized person consciously and voluntarily refuses to submit to the Roman Pontiff or to be in communion with the members of the Church subject to him. This delict, therefore, has two types of conduct. The first conduct consists in not recognizing the authority of the Supreme Pontiff. A simple disobedience to the Roman Pontiff does not constitute, therefore, the requirements of the delict in question, since the refusal to submit to his authority is necessary. The second conduct consists in the refusal of communion with the members of the Church subject to the Supreme Pontiff and therefore, ultimately, with the ecclesiastical hierarchy, even local ones. Therefore, anyone who refuses communion with his own bishop must also be considered schismatic.

The doctrine distinguishes between a simple act of disobedience and a formal act of schism. A simple disobedience to the Roman Pontiff or those in communion with him does not constitute a delict of schism. For the formal act of schism, there must be a grave act of disobedience entailing a positive and deliberate withdrawal of submission to them, so that one voluntarily and deliberately withdraws his submission or communion with the ecclesiastical hierarchy, even local one.¹⁴

Simply falling away from the practice of faith does not constitute a delict of schism, though formal and serious imputable admission into a non-Catholic or non-Christian denomination would. A public liturgical act or written declaration whereby a party separates himself from the Catholic faith might as well entail a canonical delict. In the declaration concerning the followers of Bishop Lefebvre, the Holy See clarified that for one to be said to have formally adhered to a schismatic sect or schism itself, two elements are necessary: the internal decision to subscribe freely and consciously to the substance of the schism or the schismatic teaching of the sect; and the external manifestation of the internal decision. This external manifestation may be demonstrated in various ways, of which exclusive participation in the ecclesial activities of the schismatic sects without participating in the ones of the Catholic Church is a concrete manifestation. However, mere participation in the activities and liturgies of the schismatic sects do not exclusively constitute

¹⁴ Cf. C. PAPALE, *Il processo penale canonico, commento al Codice di diritto canonico libro IV*, Rome: Urbaniana University Press, 2012, p. 195.

formal schism or adhesion to the schismatic sect if one does not agree internally with their teachings.¹⁵

In cases where schism is also joined with heresy, the doctrine distinguishes between *pure* schism and *heretical* schism. Pure schism occurs when the offender does not deny any truth of faith, but does not intend to submit to the authority of the Roman Pontiff; heretical schism occurs, however, when the delict of schism is accompanied by that of heresy, for instance, when the acting subject not only refuses to submit to the authority of the Supreme Pontiff, but does not even recognize his or her primacy. In this case the person denies a dogma of faith and ultimately, also commits the delict of heresy.

4. THE OBJECTIVE ELEMENT OF THE DELICT

The delict of heresy, apostasy, or schism, may be committed or the declaration by which they are committed may be made orally or in written form in such a way that a third party understands it. An occult conduct which is known only to oneself remains at the level of sin and cannot qualify to be a delict. We must always distinguish the *moral question* of sin of heresy, schism, and apostasy, from the juridical-penal question of *delict* and its consequent juridical effects and penalties. These delicts cannot be incurred when one has committed only a sin of apostasy or heresy or schism, but it must be truly a delict. It is, however, necessary that the material components of each delict be known.

For one to commit any of these delicts there must be an external violation of the penal law or precept, and one must be morally imputable by reason of malice or culpability (can. 1321 § 1). For this category of delicts which involve a declaration or manifestation of will or of knowledge or of doctrine, the law demands that during this declaration there be someone who actually perceives the declaration or the manifestation (*eam declarationem vel manifestationem percipiat*) (can. 1330). The verb *percipiat* (inf. *percipere*) ‘perceive, grasp, understand’¹⁶ does not imply that someone simply hears what has been declared, but rather it implies that this declaration is heard and

¹⁵ PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, *Nota esplicativa sulla scomunica per scisma in cui gli aderenti al movimento del Vescovo Marcel Lefebvre*, 24 August 1996, “Communicationes” (1997), no. 29, p. 239-243.

¹⁶ D.P. SIMPSON (Ed.), *Cassell’s Latin Dictionary: Latin-English, English-Latin*, New York: Houghton Mifflin Hartcourt, 1968, p. 433.

understood. The reason for this provision is to protect the society from the scandal which may arise from such declarations and the harm it may cause to faith. Otherwise, there will be no scandal or social harm done if no one understands what the person has declared or manifested.¹⁷

Normally, a delict is punished publicly because of the social harm it can or does produce or which it can produce. There are, however, delicts in which this harm is excluded – such is the case, for instance, of a theologian who writes a work or an article in which he openly contests the doctrine of the Church in a particular matter of a dogmatic or moral nature, but the work or article is not published or shown to anyone, so that no one is unaware of its existence. In this case, the delict undoubtedly exists, because it is an objective, external fact, but for juridical purposes it cannot be considered as accomplished because no one has seen it and neither a scandal nor harm to faith of others has arisen. Can. 1330, therefore, clarifies that a delict consisting of a declaration or other manifestation of will, doctrine or science (delict of opinion), must be considered as juridically unaccomplished, if no one becomes aware of such a declaration or manifestation.

5. SAMPLE CASES

The doctrine has always debated on the subjects who can be affected by this irregularity, and under which situations the ordinary can dispense this irregularity.

5.1 CASE ONE

We look at a candidate who was baptized in a non-Catholic sect, but later was received into the Catholic Church. He then joins a seminary, and at the end of his seminarian formation he requests to be admitted to holy orders. Does he incur this impediment?

Confusion may arise when we look at the divided opinions of authors on this matter. The praxis promoted under the 1917 Code and the praxis under the 1983 Code on this matter differ. In the same way, the doctrines developed

¹⁷ Cf. PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Declaration *Actus formalis defectionis ab Ecclesia Catholica*, Prot. N. 10279/2006, 13 March 2006, no. 3; V. DE PAOLIS, *Irregolarità e sanzioni penali*, “Periodica” (1999), no. 85, p. 706.

by the two codes differ substantially on this matter. The opinion of authors depend on whether they rely on the 1917 Code or the 1983 Code. The 1917 doctrine developed from the basic assertion of can. 12 that all baptized Christians were subject to merely ecclesiastical laws. This made it possible to extend these impediments to all baptized Christians in any Christian sect. Hence, the praxis developed mainly by the Sacred Congregation of the Holy Office, was that whoever was baptized in a non-Catholic ecclesial community or sect incurred this irregularity, therefore after being received into the Catholic Church, he had to be dispensed from the irregularity *ad cautelam*. The same position was espoused by the 1917 Code (can. 985, 2°) and the majority of its commentators, as well as the 1934 authentic interpretation that approved the dispensation *ad cautelam* of these individuals because they incurred this irregularity by reason of schism, heresy, or apostasy.¹⁸

For the 1983 Code, solely Catholics (baptized or received into the Catholic faith) are subject to ecclesiastical laws (can. 11). Impediments and irregularities to the reception of sacred orders as well as the delicts we focus here on are all matters of merely ecclesiastical law. Additionally, by virtue of the provisions of cann. 751 and 1041, 2°, one incurs this irregularity when he or she commits a delict established in can. 1364, after taking into consideration the factors required for imputability in cann. 1321 and 1323 § 1. By way of deduction, it follows that while not a member of the Catholic Church, one does not incur any delict and cannot be penalized for this. However, they equally do not incur this irregularity before they are received into the Catholic Church. This is the most logical conclusive deduction that follows from the provisions of the 1983 Code.

When an irregularity is incurred *ex defectu*, it remains part of the person and ceases only when it heals and ceases to be. Therefore, if this irregularity was to be incurred *ex defectu*, it would constitute an irregularity for reception of holy orders or exercise of orders already received for one converts to Catholic faith and asks to be admitted to holy orders while the defect continues to exist. Unfortunately, this is not an irregularity incurred *ex defectu*, but an irregularity incurred *ex delicto*. Therefore, the commission of a delict of heresy, schism, or apostasy is necessary. If this happened before he joined the Catholic Church, he did not contract the irregularity. If, after joining the Catholic

¹⁸ Cf. PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, Responsa ad proposita dubia, II. I – *De sectae atheisticae adscriptis*, 30 July 1934, AAS 26 (1934), p. 494.

Church, he relapsed and went back to the former non-Catholic sects, then returned back to the Catholic Church, certainly he would have incurred this irregularity, and the ordinary would be obliged to dispense him from the irregularity before he receives the sacred orders.

5.2 CASE TWO

This is the case of candidates who, having been baptized while young in the Catholic Church, defected to non-Catholic sects or ecclesial communities after their seventh year of age, either because their parents abandoned the Catholic Church and joined another sect or ecclesial community, or due to the influence of friends. Then, after some time they returned to the Catholic Church before they attained their sixteenth year of age. Later, they joined a seminary, and then they are asking to be admitted to the sacrament of holy orders.

The doctrine is not unanimous on this matter. For Vermeersch and De Paolis, persons baptized in the Catholic Church or received into it, who abandon the Catholic faith and join another ecclesial community or sect or even atheistic movement, incur this irregularity. For these authors, even though the legislator exonerates those below the age of 16 years from ecclesiastical sanctions (can. 1323, 1°), a person who defected from the Catholic Church after baptism or reception into it and came back to the Catholic Church before attaining the age of 16 will still incur this irregularity.¹⁹ Therefore, even if the candidate defected from the Catholic Church when he was below 16 years, he still incurs the irregularity when he comes back into full communion with the Catholic Church and asks to be promoted to holy orders, the Ordinary must dispense him if the delict is occult, if it is public the dispensation is to be given by the Holy See.

On the other hand, the majority of authors hold that a person who has not yet completed his sixteenth year of age does not incur the irregularity, even if one was baptized in the Catholic Church and was morally culpable of apostasy or of embracing heresy or schism. Once the person is above 16, the existence of a delict must be presumed in accordance with can. 1321 § 3 if he or she

¹⁹ Cf. A. VERMEERSCH, I. CREUSEN, *Epitome iuris canonici*, vol. 3, Roma: Henri Dessain, 1954, no. 254; V. DE PAOLIS, D. CITTO, *Le sanzioni nella Chiesa: Commento al Codice di diritto canonico*, Città del Vaticano: Urbaniana University Press, 2000, p. 94.

persists in heresy or schism. Given this, one who was once a Catholic after the seventh year of age, then abandoned the Catholic Church and before completing their sixteenth year of age came back, does not incur this irregularity. Those who remain outside the Catholic Church until after their sixteenth year of age incur this irregularity. Therefore, according to this position, these people need not request dispensation because they have not incurred any irregularity.

The real question here concerns the connection between this irregularity and the delict described in can. 1364 of the 1983 Code, as well as the precise moments when one can be said to have incurred the irregularity *ex delicto*. The first affirmation we make is that this irregularity is incurred *ex delicto*, that is, by the very fact of one committing the delict of heresy, schism or apostasy. It is not incurred by the very fact of committing a grave sin of apostasy, schism or heresy, a fact which seems to be insinuated indirectly by the first position. According to can. 1321 of the 1983 Code, for one to commit a delict two things are necessary: the objective element which is the violation of a penal law or penal precept; and the subjective element which is grave imputability due to either *dolus* (malice) or *culpa* (negligence or lack of due diligence).

To commit a delict, the subjective and objective elements of delict must co-exist. Therefore, when one violates a penal law but lacks imputability, then one does not commit a delict. The law admits various circumstances and conditions which may be mitigating or even exonerating, which lessens the gravity of imputability of a delict.²⁰ Whoever commits an objectively grave violation of a penal law absolutely in good faith, thinking for example, that he is doing something good or out of invincible ignorance about the existence of that law does not commit a delict because of lack of the subjective element of crime, that is lack of imputability. Equally, in the absence of a penal law, even if malice or culpability occurs, no delict is committed. For example, no delict would be committed if someone consciously and willingly behaves in a certain way, erroneously believing that by doing that he is violating a penal law that indeed does not exist. Hence the erroneous representation of the existence of a penal law and the deliberate and conscious will to violate it is not sufficient for bringing about a delict if the matter in question is not objectively grave or the law in question does not exist at all.

²⁰ Cf. A. D'AURIA, *L'interpretazione autentica del can. 1367*, p. 287-288.

According to the provisions of can. 1323, 1°, before he or she completes 16 years of age, they are released from a penalty. A candidate who was baptized in the Catholic Church as a child and after 7 years defected from it, but returns to it before turning 16, does not incur the irregularity under can. 1041, 2°. The ordinary therefore, need not occupy himself with seeking dispensation since no irregularity is incurred.

CONCLUSION

This article has demonstrated that irregularities incurred by reason of heresy, apostasy or schism are not penalties, and they do not fulfil the criteria of penalties imposed under canon law: correction of the offender, restoration of justice, and reparation of damage caused. These irregularities incurred through delict of heresy, apostasy or schism are established by the Church to preserve and safeguard the sanctity and reverence due to the sacrament of holy orders. They are not established to penalize any individual, neither are they incapacitating provisions as it is the case with marriage impediments and impediments for admission to the novitiate and religious profession. They play an important function, not of determining the validity of the sacrament of holy orders, but of determining the suitability of candidates to receive and exercise orders. It affects the lawful reception and exercise of the orders because as sacred ministers the candidates are called to perform sacred ministry rightly.

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KILKA REFLEKSJI NA TEMAT NIEPRAWIDŁOWOŚCI WYNIKŁEJ
EX DELICTO SPOWODOWANEJ POPEŁNIENIEM PRZESTĘPSTWA HEREZJI,
APOSTAZJI I SCHIZMY

STRESZCZENIE

Niniejszy artykuł ma na celu wyjaśnienie różnic między karą a nieprawidłowością, odnosząc się do potencjalnych niejasności wynikających z ich rozróżnienia. Zgodnie z kan. 1041, 2°, osoby popełniające przestępstwo herezji, apostazji lub schizmy są uznawane za nieprawidłowe do przyjęcia święceń. Chociaż w doktrynie występują różne interpretacje tego kanonu, niniejszy artykuł ma na celu wyjaśnienie charakteru i treści tej nieprawidłowości.

Słowa kluczowe: kara; debaty doktrynalne; grzech; przestępstwo; magisterium