

## Dismissal of Religious: Recent Modifications & Canonical Challenges



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Webinar - 8 March 2023  
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## Dismissal of Religious



- A. Some Recent Modifications
- B. Dismissal: Types & Procedures
- C. Some Canonical Challenges

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### A-I. Some Recent Modifications

1. C-ICL-SAL, Guidelines *The Gift of Fidelity - The Joy of Perseverance - Manete in dilectione mea (Jn 15:9)* (2 Feb. 2020).
2. Francis, Apostolic Letter issued motu proprio *Communis vita*, Which provides for the modification of several norms of the Code of canon law (19 March 2019).
3. C-ICL-SAL, Circular Letter *Siamo consapevoli*, On aspects of *Communis Vita* (8 September 2019).
4. Francis, Apostolic Letter issued motu proprio *Competentias quasdam decernere*, Introducing changes to some norms of the Code of canon law and the Code of canons of the Eastern Churches (11 February 2022).
5. Francis, Apostolic Constitution *Praedicate Evangelium*, On the Roman Curia and its Service to the Church in the World (19 March 2022).
6. Francis, Apostolic Letter issued motu proprio *Recognitum Librum VI*, With which can. 695 §1 of CIC is modified (26 April 2022).

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### 1. Francis, *Communis vita* (19 Mar. 2019)

Life in community is an essential element of religious life, and “religious are to live in their own religious house and are not to be absent from it except with the permission of their superior” (Can. 665 §1 CIC). The experience of recent years has, however, demonstrated that situations occur that are related to illegitimate absences from the religious house, during which religious distance themselves from the jurisdiction of the legitimate Superior and at times cannot be located.

The Code of Canon Law requires the Superior to seek out the illegitimately absent religious in order to help him or her to return and persevere in his or her vocation (cf. can. 665 §2 CIC). Quite often, however, it may happen that the Superior is unable to locate the absent religious. Pursuant to the Code of Canon Law, after at least six months of illegitimate absence (cf. can. 696 CIC), it is possible to begin the process of dismissal by the institute, according to the established procedure (cf. can. 697 CIC). However, when the religious’ place of residence is unknown, it becomes difficult to accord juridical certainty to the de facto situation.

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### 1. Francis, *Communis vita* (19 Mar. 2019)

Therefore, notwithstanding what is established by the law on dismissal following six months of illegitimate absence, in order to help institutes apply the necessary discipline and be able to proceed to the dismissal of the illegitimately absent religious, especially in cases in which his or her location is unknown, I have decided to add to can. 694 §1 CIC, among the reasons for dismissal ipso facto from the institute, also a prolonged illegitimate absence from the religious house lasting at least 12 consecutive months, with the same procedure described in can. 694 §2 CIC. In order to produce juridical effects, the statement of the case by the Major Superior must be confirmed by the Holy See; for institutes of diocesan right, the confirmation rests with the Bishop of the principal See.



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### 1. Francis, *Communis vita* (19 Mar. 2019)

Updated can. 694 (19 March 2019)	CIC 1983 (old version)
Can. 694 §1. A religious must be held as <u>dismissed ipso facto</u> from an institute who: 1) has defected notoriously from the Catholic faith; 2) has contracted marriage or attempted it, even only civilly; 3) has been <u>illegitimately absent</u> from the religious house, pursuant to can. 665 §2, for <u>12 consecutive months</u> , taking into account that the <u>location of the religious himself or herself may be unknown</u> .	Can. 694 §1. A member must be held as <u>ipso facto dismissed</u> from an institute who: 1) has defected notoriously from the Catholic faith; 2) has contracted marriage or attempted it, even only civilly.
§2. In such cases the Major Superior, with his or her Council and without hesitation, having gathered the evidence, must <u>issue the statement of the case</u> so that the dismissal may be juridically constituted.	§2. In these cases, after the proofs have been collected, the major superior with the council is to issue without any delay a declaration of fact so that the dismissal is established juridically.
§3. In the case envisaged by §1 n. 3, in order to be juridically constituted, this statement must be <u>confirmed by the Holy See</u> ; for institutes of diocesan right the confirmation rests with the <u>Bishop of the principal See</u> .	

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## 2. C-ICL-SAL, Circular Letter (8 Sep. 2019)

### Introduction

- In some places the **community life has lost relevance** in the eyes of men and women religious and perhaps is considered no longer an ideal to pursue (Instruction *The Fraternal Life in Community*, 2 Feb. 1994)
- Change of Can. 694** by Pope Francis (*Communis vita*)
- This change offers the opportunity to find a solution to cases of **illegitimate absence**, with particular reference to members who **sometimes cannot be traced or who have gone untraceable**.
- Various situations of absence**
  - illegitimately absent** – without permission (665 §2)
  - legitimately absent but not back in the community** after the time limit (665 §1: absence, 686 §1: excommunication)
  - illegitimately absent** – without **communicating his/her address / place of residence**
- Not apply**
  - if **legitimately absent** but place of residence **unknown** (665 §1: absence, 686 §1: excommunication)
  - if **illegitimately absent** but place of residence **known** (665 §2)
  - if cases occurred **before 10<sup>th</sup> April 2019** (enter into force: cann. 8-9)

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## 2. C-ICL-SAL, Circular Letter (8 Sep. 2019)

### APPLY - if one knows ONLY

- a telephone number or an email address
- a profile on social networks or a fictitious address
- Different steps to be completed by the competent Superior**
  - seek out **solicitously** those absent & help to return & persevere (665 §2) = not limit to occasional & hasty investigations: search among members/previous superiors, friends & family, ways allowed in civil law
  - how to accord juridical certainty to the **de facto** situation: produce proofs of search (letters sent but returned to sender: 1509-1510, calls made, personal search, etc.);
  - Superior with his/her council – declare **unknown** status of residence (to know the date *a quo* for calculation: 203 §1)
  - after 12 consecutive months** - if status **still unknown** - proceed to declare "ipso facto dismissal"

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## 3. Francis, *Competentias quasdam decernere* (11 Feb. 22): About 11 Canons Updated

The assignment of certain areas of competence with regard to the provisions of the Codes intended to safeguard unity of discipline in the universal Church, and executive power in the local Churches and ecclesial institutions, corresponds to the dynamic of ecclesiastical communion and enhances proximity. A **healthy decentralization** can only foster that dynamic, without prejudice to its hierarchical dimension.

Therefore, with due regard for the ecclesial culture and juridical mentality proper to each Code, I have considered it fitting to introduce changes to the current regulations in certain specific areas, by assigning their various areas of competence. They are meant, above all, to **foster the sense of collegiality and pastoral responsibility** of diocesan/eparchial bishops assembled in episcopal conferences, or in accordance with eastern hierarchical structures, and **major superiors**, but also to **respect the principles of reasonableness, effectiveness and efficiency**.

These changes reflect more clearly the Church's shared and pluralistic universality, which embraces differences without leveling them, guaranteeing, with respect to her unity, the ministry of the Bishop of Rome. At the same time, they will **encourage a more rapid and effective pastoral governance on the part of local authority**, not least by facilitating its proximity to individuals and situations that demand it.

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## 3. Francis, *Competentias quasdam decernere* (11 Feb. 22): 4 Canons Updated on "Religious Life" (& 604: Virgins)

### Art. 5

Canons 686 §1 CIC and 489 §2 CCEO, on the grant of an **indult of EXCOMMUNICATION**, for a grave cause, to a member professed by perpetual vows, extend the time limit **for five years**, after which, competence for an extension or grant is reserved to the Holy See or to the diocesan bishop.

### Art. 6

Canon 688 §2 CIC and canons 496 §§1-2 and 546 §2 CCEO, on individuals **temporarily professed** who ask, for a grave cause, to **LEAVE the institute**, assign competence for the relevant **indult** to the **supreme moderator, with the consent of the council**. For the Latin Code, this applies to **both institutes of pontifical right and institutes of diocesan right**, as well as **autonomous monasteries**; for the Eastern Code, it applies to a monastery *sui iuris* or to an order or congregation.

### Art. 7

Canons 699 §2 and 700 CIC and canons 499, 501 §2 and 552 §1 CCEO are modified, so that that the decree of **DISMISSAL** from an institute, for a grave cause, of a **temporarily or perpetually professed** member takes effect from the time that the decree, **issued by the supreme moderator with the consent of his or her council**, is **communicated to** that member, who retains the right to appeal.

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## 3. Francis, *Competentias quasdam decernere* (11 Feb. 22)

Updated can. 699 §2 (11 Feb 22)	CIC 1983 (old version)
Can. 699 §1. The <b>supreme moderator with the council</b> , which must consist of at least four members for validity, is to <b>proceed collegially</b> to the accurate consideration of the proofs, arguments, and defenses; if it has been decided through secret ballot, the supreme moderator is to <b>issue a decree of dismissal</b> with the reasons in law and in fact expressed at least summarily for validity.	Can. 699 §1. The <b>supreme moderator with the council</b> , which must consist of at least four members for validity, is to <b>proceed collegially</b> to the accurate consideration of the proofs, arguments, and defenses; if it has been decided through secret ballot, the supreme moderator is to <b>issue a decree of dismissal</b> with the reasons in law and in fact expressed at least summarily for validity.
Can. 699 §2. In the <b>autonomous monasteries</b> mentioned in can. 615, it <b>belongs to the major superior, with the consent of his or her council, to decide on dismissal</b> .	§2. In the autonomous monasteries mentioned in can. 615, it <b>belongs to the diocesan bishop</b> , to whom the superior is to submit the acts examined by the council, to <b>decide on dismissal</b> .

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## 3. Francis, *Competentias quasdam decernere* (11 Feb. 22)

Updated can. 700 (11 Feb 22)	CIC 1983 (old version)
Can. 700. A <b>decree of dismissal</b> issued in the case of a professed member <b>takes effect</b> from the time that it is <b>communicated to the member concerned</b> .	Can. 700 A decree of dismissal does not <b>have effect</b> unless it has been <b>confirmed by the Holy See</b> , to which the decree and all the acts must be transmitted; if it concerns an institute of diocesan right, <b>confirmation belongs to the bishop of the diocese</b> where the house to which the religious has been attached is situated.
To be valid, however, the decree must indicate the <b>right</b> which the dismissed possesses to <b>make recourse</b> to the competent authority <b>within ten days</b> from receiving notification. The recourse has <b>suspensive effect</b> .	To be valid, however, the decree must indicate the <b>right</b> which the dismissed possesses to <b>make recourse</b> to the competent authority <b>within ten days</b> from receiving notification. The recourse has <b>suspensive effect</b> .

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#### 4. Francis, *Praedicate Evangelium* (19 March 2022)

Art. 124 §1. In accordance with canonical norms, the Dicastery deals with matters belonging to the competence of the Apostolic See regarding the life and activity of the Institutes of Consecrated Life and Societies of Apostolic Life, particularly with regard to:

1. the approval of Constitutions and their amendments; 2. ordinary government and discipline of members; 3. the incorporation and formation of members, including through specific norms and directives; 4. temporal goods and their administration; 5. the apostolate; 6. extraordinary measures of governance.

§2. The following **also belong to the competence of the Dicastery**, according to the norm of law:

1. the transfer of a member to another approved form of consecrated life; 2. the extension of absence and excommunication beyond the term granted by the supreme Moderators; 3. the indult for members in perpetual vows to depart from Institutes of Consecrated Life or Societies of Apostolic Life of Pontifical right; 4. imposed excommunication; 5. the examination of appeals against the decree of dismissal of members.

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#### 5. Francis, *Recognitum Librum VI* (26 Apr. 2022)

On 1 June 2021, with the Apostolic Constitution *Pascite gregem Dei*, we promulgated the **new Book VI** of the Code of Canon Law, *De sanctionibus poenalibus in Ecclesia*. In it some delicts have been typified differently, other new ones have been introduced and, moreover, the succession of canons has also changed. This requires a **modification** in order to **conform with the canons of other Books** of the Code.

Having said that, having consulted the Pontifical Council for Legislative Texts and the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, we establish that **the text of can. 695 §1, is modified** as follows:

*Sodalis dimitti debet ob delicta de quibus in cann. 1395, 1397 et 1398, nisi in delictis, de quibus in cann. 1395 §§2-3, et 1398 §1, Superior maior censeat dimissionem non esse omnino necessariam et emendationi sodalis atque restitutioni iustitiae et reparationi scandali satis alio modo consuli posse.*

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#### 5. Francis, *Recognitum Librum VI* (26 Apr. 2022)

Updated can. 695 (26 April 2022)

695 §1. A member **must be dismissed** for the offenses in **cann. 1395, 1397 and 1398, unless** in the delicts mentioned in **cann. 1395 §§2-3 and 1398 §1, the major superior judges that dismissal is not entirely necessary and that the correction of the member and restitution of justice and reparation of scandal can be sufficiently assured in some other way.**

§2. In these cases, after the proofs regarding the facts and imputability have been collected, the **major superior** is to make known the accusation and proofs to the member to be dismissed, giving the member the opportunity for self-defense. All the acts, signed by the major superior and a notary, together with the responses of the member, put in writing and signed by that member, are to be transmitted to the supreme moderator.

CIC 1983 (old version)

Can. 695 §1. A member **must be dismissed** for the delicts mentioned in **cann. 1397, 1398, and 1395, unless** in the delicts mentioned in **can. 1395, §2**, the superior decides that dismissal is not completely necessary and that correction of the member, restitution of justice, and reparation of scandal can be resolved sufficiently in another way.

§2. In these cases, after the proofs regarding the facts and imputability have been collected, the **major superior** is to make known the accusation and proofs to the member to be dismissed, giving the member the opportunity for self-defense. All the acts, signed by the major superior and a notary, together with the responses of the member, put in writing and signed by that member, are to be transmitted to the supreme moderator.

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#### A-II. Some "Recent" Modifications

Other **Special Laws** with **Indirect Consequences**

Francis, Apostolic Letter issued motu proprio *As a Loving Mother* (04 June 2016).

ii. Francis, Apostolic Letter issued motu proprio *Vos estis lux mundi* (07 May 2019).

iii. Congregation for the Doctrine of Faith, *Norms regarding Delicts Reserved to the Congregation for the Doctrine of the Faith* (11 October 2021).

iv. Congregation 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 (5 June 2022).

v. Francis, Apostolic Constitution *Pascite gregem Dei*, Reforming Book VI of the Code of Canon Law (23 May 2021). **Newly Revised "Book VI Penal Sanctions in the Church"** (of the Code of Canon Law) (entered into force on 8 December 2021).

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#### i. Francis, *As a Loving Mother* (4 June 2016)

... the possibility of **removal from ecclesiastical office** "for grave reasons" (**cann. 192-195**) = the **negligence** of a Bishop in the exercise of his office, and in particular in relation to cases of sexual abuse inflicted on minors and vulnerable adults... (**1378 §2: Abuse of Office**)\*

o Art. 1 §1 The **diocesan Bishop or Eparch**... can be **legitimately removed from this office** if he has through **negligence** committed or through omission facilitated acts that have **caused grave harm** to others, either to physical persons or to the community as a whole. The **harm** may be physical, moral, spiritual or through the use of patrimony.

o §2. The diocesan Bishop or Eparch **can only be removed** if he is **objectively lacking in a very grave manner the diligence** that his pastoral office demands of him, even without serious moral fault on his part.

o §3. In the case of the **abuse of minors and vulnerable adults** it is enough that the **lack of diligence be grave**.

o §4. The **Major Superiors of Religious Institutes and Societies of Apostolic Life of Pontifical Right** are equivalent to diocesan Bishops and Eparchs.

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#### ii. Francis, *Vos estis lux mundi* (07 May 2019)

o Art 1 §1 a) **delicts against the sixth commandment of the Decalogue (by members of ICL-SAL)** consisting of:

- o i. **forcing** someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts (**1395 §3**)\*
- o ii. performing sexual acts with a **minor** or a **vulnerable person**; (**1398 §1.1**)\*
- o iii. the production, exhibition, possession or distribution, including by electronic means, of **child pornography** (**1398 §1.3**)\*, as well as by the recruitment of or inducement of a minor or a vulnerable person to **participate in pornographic exhibitions** (**1398 §1.2**)\*

o Art 1 §1 b) actions or omissions (by **Supreme moderators** of ICL-SAL of Pontifical Right) **intended** to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against a cleric or a religious (**1378 §1: Abuse of office**)\*

o Art. 3 Mandatory Reporting **by members of ICL-SAL** to local Ordinary or Ordinary & in cases involving **Supreme moderators** of ICL-SAL of Pontifical Right to Holy See (**1371 §6**)\*

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### iii. CDF, Norms regarding Delicts Reserved to CDF (11 Oct. 21)

- Art. 7 **Whoever** commits the **delicts mentioned in artt. 2-6**, besides **what is established for individual delicts in the CIC** and ... with a **just penalty** according to the gravity of the crime; **if committed by a (RELIGIOUS) cleric**, he may also be punished by **dismissal or deposition from the clerical state**.
- Art. 2: Delicts against the **faith**
- Art. 3: Delicts against the **Eucharist**
- Art. 4: Delicts against the **Sacrament of Penance**
- Art. 5: Delict of attempted **sacred ordination of a woman**
- Art. 6: Delicts against **morals**
- Follow the **Procedural Norms** (art. 9-29): Dicastery for the Doctrine of the Faith = Supreme Apostolic Tribunal

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### iv. CDF, Vademecum - Cases of Sexual Abuse of Minors Committed by Clerics (5 June 2022)

8. In accordance with the law governing **religious** who are members of the Latin Church (cf. canons 695ff. CIC), the delict mentioned above in no. 1 (**offense against 6<sup>th</sup> commandment committed by a cleric with a minor**) can also entail **dismissal from a religious institute**. The following should be kept in mind:

- such dismissal is **not a penalty**, but rather **an administrative act of the Supreme Moderator**;
- to issue a decree of dismissal, the relevant procedure described in canons **695 §2, 699 and 700 CIC (Obligatory Dismissal)** must be carefully followed;
- dismissal from the institute **entails the loss of membership in the institute and the cessation of vows and obligations** deriving from profession (cf. canon 701 CIC), as well as the **prohibition of exercising any sacred orders** received until the conditions referred to in canon 701 CIC are met.

The same rules, suitably adapted, are also applicable to **definitively incorporated members of Secular Institutes and Societies of Apostolic Life** (cf. canons 729 and 746 CIC).

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### v. Francis, Pascite gregem Dei (23 May 2021) & Newly Revised "Book VI Penal Sanctions in the Church" (8 Dec. 21)

**Dismissal from the clerical state** (1317: not establish by lower legislator; 1336 §5: Expiatory penalties; 1350: Provide for the needs of dismissed cleric)

**Dismissal from the clerical state as Penalty** (\*\**delicta graviora* reserved to DDF)

- 1364: commits heresy, apostasy, schism\*\*
- 1370 §1: physical force against Roman Pontiff
- 1379 §3: attempts to confer a sacred order on a woman\*\*
- 1382: throws away consecrated species or consecrates for a sacrilegious purpose\*\*
- 1385: solicitation in confession\*\*
- 1386 §3: records and/or divulges sacramental confession\*\*
- 1392: voluntarily & unlawfully abandons sacred ministry - for 6 months continuously
- 1394: cleric/**religious(perpetual vows)**- attempts marriage, *even if only civilly*
- 1395**: live in concubinage or sin against 6<sup>th</sup> commandment with scandal or committed in public
- 1397**: commits homicide or abducts, imprisons, mutilates or wounds or procures an abortion
- 1398**: cleric/**member ICL/SAL** - offence against 6<sup>th</sup> commandment with a minor or induces to expose pornographically or take part in pornographic exhibitions or immorally acquires, retains, exhibits or distributes pornographic images of minors\*\*

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## Dismissal of Religious



A. Some Recent Modifications

→ B. Dismissal: Types & Procedures

C. Some Canonical Challenges

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## B. Dismissal of Religious (GoF 80-98)



- Automatic (Ipso facto) Dismissal (694; GoF 81-86)**
- Mandatory / Obligatory Dismissal (695; GoF 87-92)**
- Optional Dismissal (696; GoF 93-95)**
- Immediate Expulsion (703)**

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### 1. Automatic (Ipso facto) Dismissal (694; GoF 81-86)

- Notoriously defected from the catholic faith (§1.1°; GoF 82)**
  - against **fundamental right & duty of full communion** of faith, sacraments & ecclesiastical government (204-205, 209)
  - "virtual" forms of **notoriously or publicly abandoning the faith** (171 §1.4°, 194 §1.2°, 316 §1, 694 §1.1°, 1071 §1.4°, 1071 §2)
  - actus formalis defectionis ab Ecclesia catholica* (1086 §1, 1117, 1124; PCLT, 13 March 2006): decision, manifestation, reception by authority
- Contracted or attempted marriage - even civilly (§1.2°; GoF 83)**
  - against the **vow of chastity** = perfect & perpetual continence (599, 573-576, 607, 672, 277)
  - possibilities of "attempting/contracting" a marriage (1078 §2.1°, 1087, 1088, 1394): valid, but illicit canonical marriage; invalid canonical marriage; (valid) civil marriage
- Illegitimate absence = for 12 months & untraceable (§1.3°; GoF 84; NEW: Francis Communis vita, 26 March 2019)**
  - against duty to **observe common life & live in their own religious house** (665 §1, 602, 607 §2, 608, 103)
  - APPLY if one knows ONLY**: a telephone number; an email address; a profile on social networks; a fictitious address

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## 1. *Ipso facto* Dismissal (694): Procedure




Major Superior collects the proofs (1526-1586)

Presents the proofs to the religious concerned (GoF 85)


Consider proofs & documentation with his/her council

Issue a declaration of fact & decree of dismissal (with penalties & irregularities, if any)



Case of illegitimate absence (694 §3: **NEW**): receive confirmation of declaration: Pontifical Right (D-ICL-SAL) or Diocesan Right (Bishop of principal See)

Communicate it to the religious or in official form (Edict: if untraceable) & to Parish of baptism



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## B. Dismissal: Types & Procedures



1. Automatic (*Ipso facto*) Dismissal (694; GoF 81-86)
2. Mandatory Dismissal (695; GoF 87-92) ←
3. Optional Dismissal (696; GoF 93-95)
4. Immediate Expulsion (703)

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## 2. Mandatory Dismissal Superior *should* begin (New 695; GoF 87-92)

Delicts Against Life (§1; GoF 88-89)

- new 1397 §1: commits homicide or by force or by fraud abducts, imprisons, or mutilates or gravely wounds a person (GoF 88); §2: actually procures an abortion (GoF 89)


Delicts Against Chastity (§1; GoF 90-91)

- new 1395 §1: concubinage or external sin against 6<sup>th</sup> commandment causing scandal & persists (GoF 90); §2: other offenses committed in public (GoF 91); §3: other offenses committed by force / threat / abuse of authority (VELM, art. 1 §1.a-i) (GoF 91); §3: forces someone to perform or submit to sexual acts (VELM, art. 1 §1.a-i)
- new 1398 §1.1<sup>o</sup>: offence against 6<sup>th</sup> commandment with a minor (= person who habitually has an imperfect use of reason) or with one to whom the law recognises equal protection (= vulnerable person) (VELM, art. 1 §1.a-ii); §1.2<sup>o</sup>: grooms or induces to expose oneself pornographically or to take part in pornographic exhibitions, whether real or simulated; with a minor or vulnerable person (VELM, art. 1 §1.a-iii); §1.3<sup>o</sup>: immorally acquires, retains, exhibits or distributes, in whatever manner and by whatever technology, pornographic images of minors or persons who habitually have imperfect use of reason; §2: applies to all members of an ICL or SAL or any faithful with dignity or office or function in the Church

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## 2. Mandatory Dismissal (695 §2): Procedure-I

**Phase I:** Major Superior **MUST BEGIN** the Process: collect the proofs (1526-1586)



Considers proofs & documentation – judge the “imputability” with his/her council


Presents accusation & evidence to the religious concerned; gives opportunity for defence (698)

Cases of delicts **NEW** (1395 §§2-3: public, force, threat, abuse of office & 1398 §1: with minor & vulnerable person): make a discretionary decision whether to proceed with the dismissal or use other means of correction

Sends all the acts to supreme Moderator

Procedure: **Phase II** (as indicated in 699)

Procedure: **Phase III** (as indicated in 700)



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## 2. Mandatory Dismissal (699-700): Procedure-II & III

**Phase II (699):** Supreme moderator (General Superior) convenes the General council

Supreme moderator - along with the council members - proceeds in a collegial fashion (119.2<sup>o</sup>): Consider proofs & documentation - decide by a secret vote on dismissal

Draws up decree of dismissal: have indications about right to recourse (within 10 useful days from notification)

Cases of autonomous monasteries (615): **NEW** - major superior decides on dismissal - with the consent of his or her council

**Phase III (700):** Competent Superior must give notification of the original decree of dismissal → No confirmation needed\*\* **NEW**

Levels of recourse: in 1<sup>o</sup> instance (D-ICL-SAL); in 2<sup>o</sup>, 3<sup>o</sup> instance (Supreme Tribunal of the Apostolic Signatura)



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## B. Dismissal: Types & Procedures



1. Automatic (*Ipso facto*) Dismissal (694; GoF 81-86)
2. Mandatory / Obligatory Dismissal (695; GoF 87-92) ←
3. Optional Dismissal (696; GoF 93-95)
4. Immediate Expulsion (703)

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### 3. Optional Dismissal

= Major Superior *decides whether* to begin the process

- ❖ **Causes (696): continuous or repetitive**
  - §1: **4 requisites**
    - grave (material & formal)
    - external (exteriorly contestable & measureable vs 1330)
    - imputable (1321 §4: penal responsibility = external violation; 1321 §2 = imputable - *dolus / culpa*; Various levels: 1322-1326)
    - juridically proven (from warnings & replies of accused)
  - Habitual neglect of the obligations of consecrated life (573-606; 662-672)
  - Repeated violations of the sacred bonds (599-601, 607 §2)
  - Obstinate disobedience to the lawful orders of Superiors in grave matters (601; 1371 §1, 1373)
  - Grave scandal arising from culpable behaviour of the member *Obstinate* attachment to, or diffusion of, teachings condemned by the magisterium of the Church (204-205, 209, 212, 749-752, 1364 → 751, 1365, 1368, 1373, 1374)
  - Public adherence to materialistic or atheistic ideologies: against vow of poverty (600, 668) & one's faith (204-205, 209, 597)
  - Unlawful absence (665 §§1-2; 602, 607 §2) - if more than 6 months
  - Other grave reasons (1364-1399: *determined* by Proper law)
  - Causes less grave (for those in *temporary vows*)

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### 3. Optional Dismissal (697): Procedure-I

**Phase I:** Major Superior **MAY BEGIN** Process: recalls the religious & threatens canonical sanctions

If no proper response/change: Considers proofs - consult the council - issues **FIRST** canonical warning & notify warning

**Canonical warning - Elements (GoF 95):** Legal grounds; Facts; accused; Action/Omission required; Threat of dismissal; opportunity for defence (698)

**AFTER 15 days** → If no proper response/change: Considers proofs - consults the council - issues **SECOND** canonical warning & notify warning

**AFTER 15 days** → major superior convenes the Council & judges by secret vote on evidence & incorrigibility & Sends all the acts to the supreme Moderator

Procedure: **Phase II** (as indicated in 699)

Procedure: **Phase III** (as indicated in 700)

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### \* Effects of Dismissal (701, 702; GoF 97-98)

#### Rights & duties of dismissed religious

- vows & rights/duties from profession automatically cease
- **if cleric:** retains clerical status (GoF 97)
  - cannot exercise sacred orders (due to dismissal)
  - **until** he finds a diocesan bishop
    - to **incardinate** or **receive him** for a probationary period (693)
    - **at least** to allow him to exercise sacred orders (701)
- cannot claim anything from Rel.Ins. - for any work done in it
- whatever is *earned during profession* - to the institute (668 §3)
- offer work as a *gratuitous expression of love & charity*

#### Rights & duties of Rel.Ins. (GoF 98)

- show **equity & evangelical charity** towards ex-member
  - **Equity** = commensurate with *personal situation & circumstances & real possibilities* of Rel.Ins.
  - **Charity** = commensurate with the *actual needs* of member
- **at least** for the period immediately after dismissal
  - until s/he can provide for her/himself

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### B. Dismissal: Types & Procedures



1. Automatic (*Ipso facto*) Dismissal (694; GoF 81-84)
2. Mandatory / Obligatory Dismissal (695; GoF 87-92)
3. Optional Dismissal (696; GoF 93-95)
4. **Immediate Expulsion (703)** ←

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### 4. Immediate Expulsion (703)

❖ **Causes** = *necessitas defendendi instituta religiosa contra abusum libertatis*

**Three conditions should co-exist**

- certainty of existence of the cause - religious is the author
- impossibility of avoiding scandal or harm in other ways
- scandal / damage can be eliminated or diminished with expulsion

**i. Grave External Scandal (like those in 694, 695)**

- ✓ scandal caused = grave or serious
- ✓ scandal *may not be* due to the conduct of the religious
- ✓ but as a *reaction caused* to his/her conduct
- ✓ scandal be external - not just within Rel.Ins. or community

**ii. Extremely Grave & Imminent Harm to Religious Institute**

- ✓ damage/harm as a result of action of the religious
- ✓ damage/harm be for the "religious institute" - not to any persons
- ✓ damage/harm must be grave to the Rel.Ins. & *at least* imminent (economic ruin, suppression of religious institute or house, revolt against religious & their presence, criminal charge, etc.)

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### 4. Immediate Expulsion (703)

#### Procedure

- ❖ **Competent Authority**
  - Major superior (*even personally*)
  - Local Superior & *consent* of local council (if there is danger in delay)
- ❖ **After expulsion**
  - Rights & duties of member - not specified
    - rights & duties suspended?
    - place of residence?
    - what if a cleric?
  - Duties of Major superior
    - introduce a process of dismissal - follow norms
    - refer the matter to the Apostolic See (D-ICL-SAL)

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## Dismissal of Religious



A. Recent Modifications

B. Dismissal: Types & Procedures

C. Some Canonical Challenges

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## C-1. Some Canonical Challenges

**Consecrated life** – call to “*strive for the perfection of charity in the service of the kingdom of God*” (573 §1)



**Consecrated life** is at the very heart of the Church (NW-NW 32) & is meant to be the living prophecy of the evangelical inventiveness and originality of charity.

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## C-1. Some Canonical Challenges

**Consecrated life** (Microcosm of our society) → has members with “problems” (EG 78; SAC 12; FLC 36-38, NW-NW 24, 33; SAO 25b-c):

- **Personal Problems:** defects of character, problems of insufficient maturity, alcohol or drug addiction, temptations of efficiency and activism (burnout, depression)
- **Affective or Relational Problems:** lack of psychological balance or emotional maturity, intrusive or possessive relationships, serious sexual problems
- **Community Problems:** tensions due to cultural and generational differences; “different forms of enmity, division, calumny, defamation, vendetta, jealousy and the desire to impose certain ideas at all costs, even to persecutions which appear as veritable witch hunts” even among “Consecrated Persons” (EG 100)
- **Spiritual Problems:** decline or absence of spiritual life or vision of faith

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## C-1. Some Canonical Challenges

**Usual Reactions to Members with “Problems”:**

- usually *ignored or avoided or transferred or assigned harmless tasks* to keep them “quiet”
- NW-NW 21, 24: could also lead to (illegitimate) absence (665 §§1-2); excommunication (686-687); permanent departure (688-693)

**Proper Response of Superiors** (*Communis Vita* / *Cir. Letter* 2019):

- The life of **brothers or sisters** proper to each institute, by which *all the members are united together* as a **special family in Christ**, is to be defined in such a way that it becomes a **mutual support** for all in fulfilling the vocation of each (602)
- Superiors are... *solicitous* to care for and visit the sick (not only the “physically” sick), to correct the restless, to console the faint of heart, and to be patient toward all (619)
- follow the example of *Christ the Good Shepherd & Good Samaritan* (665 §2, SAO 13d); pedagogy of forgiveness and mercy (SAO 25d)
- Propose also psychological help (when needed) & spiritual direction (FLC 38)

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## C-1. Some Canonical Challenges

**How to discern:** When do the “problems” / weaknesses of members become “causes” for dismissal?

- recognise **serious problems** against consecration / religious vows (chastity, poverty or obedience) / community life
- pay attention to various “causes” **already indicated** for dismissal: *ipso facto* dismissal (694); mandatory dismissal (can. 695); optional dismissal (696)
- other “problems” become “causes” if are “grave, external, imputable & juridically proven” (696 §1: if continuous or repetitive)

**Proper Response of Superior:**

- never abdicate one’s responsibilities: Not be deaf & dumb (SAO 20f); **punishment** can be an *act of love* (Benedict XVI, *Light of the World*, 2010)
- act immediately *when others are affected* (persons or institutions) & ensure justice for the victims, if there are (SAO 20f; VELM)
- begin with “methods of pastoral care” (1341): fraternal correction, admonition, reproof or penance (697, 1339-1341)... eventually continue with the **process of dismissal** (694, 695 §2, 697, 699)

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## C-2. Some Canonical Challenges

- **Updated can. 695 §1 - *Recognitum Librum VI*, 2022:**

- it updated those canons (referred within) in correct order (first part)

- is the second part according to the changed “ecclesial vision”?

695 §1. A member **must** be dismissed for the offenses in **cann. 1395, 1397 and 1398, unless in the delicts mentioned in cann. 1395 §§2-3 and 1398 §1**, the major superior **judges** that dismissal is not entirely necessary and that the correction of the member and restitution of justice and reparation of scandal can be sufficiently assured in some other way.

- One fails to understand **why still this “discretionary decision”** for Cases of delicts against 6<sup>th</sup> commandment (1395 §§2-3: committed in public or with force, threat, abuse of office & 1398 §1: with minors or “vulnerable persons”)?
- Is this not **against the SPIRIT** of the special laws given through AALM & VELM & even can. 1398 §2 & the policy of “Zero tolerance” of CDF Norms 2021 / *Vademecum* 2022?
- Does it not **encourage** the abuse of office through “cover-up” or convenient “negligence” on the part of superiors (at least in “some” cases)?
- **Updated CDF-Norms 2021, *Vademecum* 2022:**
- **What happens if a religious (not just a religious-cleric) has committed the delicta graviora reserved to DDF?** Does such serious offence **not warrant at least mandatory dismissal** from religious institute?

**MY suggestion to further update can. 695 §1**

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## C-2. Some Canonical Challenges

### Updated can. 695 §1

**Sodalis dimitti debet** ob delicta de quibus in cann. 1395, 1397 et 1398, **nisi in delictis, de quibus in cann. 1395 §§2-3, et 1398 §1, Superior maior censeat dimissionem non esse omnino necessariam et emendationi sodalis atque restitutioni iustitiae et reparationi scandali satis alio modo consuli posse.**

### Suggested can. 695 §1

**Sodalis dimitti debet** ob delicta de quibus in cann. 1395, 1397 et 1398, **et ob delicta graviora Dicasterii pro Doctrina Fidei reservata.**

Jesu Pudumai Doss, *Dimissione dei religiosi: Cenni storici e approfondimenti normativi*, in Jesu Pudumai Doss (Ed.), *In Ecclesiae corde. Aspetti canonici della vita consacrata*, LAS, Roma 2019, 177-218 (especially 208-210, 212).

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## C-3. Some Canonical Challenges

- Updated can. 694 §1,3° & §3 - *Communis vita*, 2019 (& *Circular Letter*, 2019):
  - addressed a very long-standing issue: **absent religious**
  - In some places the community life has lost relevance in the eyes of men and women religious and perhaps is considered no longer an ideal to pursue (Circular Letter 2019; *The Fraternal Life in Community*, 1994).
  - contrary to the basic element of Religious Life (607 §2, 602, 665, 608, 103)
  - similar to "penalties" for an **absent cleric** (283 §1, 1392, *Special Faculties*)
  - Some problems persist in interpretation: Canonical proofs of the "untraceable-ness" of the member; Determination of the date a quo to calculate 12 consecutive months
- Updated Book VI:
  - What happens if a **religious-cleric** has been *dismissed from clerical state* (list of serious delicts of *New Book VI*) – but *not from religious institute*?
  - Do these serious offences (especially if dismissal has been imposed by DDF) not warrant *ipso-facto* dismissal from religious institute?
- MY suggestion to further update can. 694 §1\***

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## C-3. Some Canonical Challenges

### Updated can. 694 §1

Can. 694 §1. Ipso facto dimissus ab instituto habendus est sodalis qui: 1° a fide catholica notorie defecerit; 2° matrimonium contraxerit vel, etiam civiliter tantum, attentaverit; 3° a domo religiosa illegitime absens fuerit, secundum can. 665 §2, duodecim continuos menses, prae oculis habita eiusdem sodalis irreperibilitate.

### Suggested can. 694 §1

Can. 694 §1. Ipso facto dimissus ab instituto habendus est sodalis qui: 1° a fide catholica notorie defecerit; 2° matrimonium contraxerit vel, etiam civiliter tantum, attentaverit; 3° a domo religiosa illegitime absens fuerit, secundum can. 665 §2, duodecim continuos menses, prae oculis habita eiusdem sodalis irreperibilitate; 4° **statum clericalem amiserit poena dimissionis legitime irrogata, ad normam can. 290,2°.**

Jesu Pudumai Doss, *Dimissione dei religiosi: Cenni storici e approfondimenti normativi*, in Jesu Pudumai Doss (Ed.), *In Ecclesiae corde. Aspetti canonici della vita consacrata*, LAS, Roma 2019, 177-218 (especially 210-211).

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## C-4. Some Canonical Challenges

- Updated can. 700 - *Competentias quasdam decernere* (11 Feb. 22):
  - It is welcome change to "respect the principles of reasonableness, effectiveness and efficiency" & to enable "**healthy decentralization**" (**subsidiarity**; *Principle 5 for Revision of CIC - 1967*): **exclaustration** (686 §1); **indult of departure of temporarily professed** (688 §2)
  - Should the "**confirmation**" of the decree of dismissal (which acted as a **check for "unjust dismissals"**) have been retained? = as in the **indult of departure of perpetually professed** (691 §§1-2) – by Apostolic See or bishop of diocese of assignment (*GoF 94: Verify Procedures/Reasons*)
  - Does it protect/enhance the rights of member (in dismissal process)?
    - right of the member **to communicate** with & to offer defenses directly to the supreme moderator (698)
    - right of the dismissed **to make recourse** to the competent authority within ten days from receiving notification (700)
  - In what way **ALL the rights to "due process"** be enabled? **can. 221**: right to legitimately vindicate and defend the rights, right to be judged according to the prescripts of the law applied **with equity**, right not to be punished with canonical penalties except **according to the norm of law**

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## C-5. Some Canonical Challenges

Updated 1378 (& VELM, AALM): abuse of office with **dolus** or **culpa**

- Can. 1378 §1. A person who, apart from the cases already foreseen by the law, **abuses ecclesiastical power, office, or function**, is to be punished according to the gravity of the act or the omission, not excluding by deprivation of the power or office, without prejudice to the obligation of repairing the harm.
- §2. A person who, **through culpable negligence**, unlawfully and **with harm to another** or scandal, **performs or omits an act of ecclesiastical power or office or function**, is to be punished according to the provision of can. 1336 §§ 2-4, without prejudice to the obligation of repairing the harm.
- AALM (1378 §2) art. 1: The **Major Superiors** of Religious Institutes and Societies of Apostolic Life of Pontifical Right (§4)... **can be legitimately removed** from this office if he has **through negligence committed or through omission facilitated acts** that have **caused grave harm to others**, either to **physical persons** or to the **community** as a whole. The **harm** may be physical, moral, spiritual or through the use of **patrimony**.
- VELM (1378 §1) speaks of **deliberate** interference or manipulation of processes (**Supreme moderators of ICL or SAL of Pontifical right**): actions or omissions **intended to interfere with or avoid civil investigations or canonical investigations**, whether administrative or penal, against a cleric or a religious
- In what way one can deal with the Superiors who cause **"institutional or personal harm"** through the **abuse of office in actions/omissions** (not only in cases of abuse of minors)? **Deliberately "harming"** someone in action taken or in being too negligent to take any action?

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## C-6. Some Canonical Challenges

Effects of Dismissal (not fully addressed still)

- effects of **"incorporation"** (due to religious profession) **terminate**
- effects of **"incardination"** (due to sacred ordination) **continue**
  - if no new incardination at the time of dismissal or eventually afterwards

Questions about the "Assistance" to the Dismissed Member

- to a **dismissed religious**: **can request nothing** from the institute for any work done in it & the institute is to **observe equity & charity of the gospel** (702)
- to a **dismissed religious-cleric** (esp. if no new incardination): apply **1350**; **not lack what is necessary** for his worthy support & **if in need - provide** in the best way possible

Jesu Pudumai Doss, *Dimissione dei religiosi: Cenni storici e approfondimenti normativi*, in Jesu Pudumai Doss (Ed.), *In Ecclesiae corde. Aspetti canonici della vita consacrata*, LAS, Roma 2019, 177-218 (especially 212-216).

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## Conclusions: Art of Accompaniment

Vocational discernment is important... That is where discernment lies: knowing how to say 'no'. Do not send them away: no, no. I am accompanying you, go on, go on, go ahead.... As one accompanies the entry, accompany the exit too, so that he or she may find the path in life, with the necessary help. Francis, Address (11 April 2015)

The “art of accompaniment ... teaches us to *remove our sandals before the sacred ground of the other* (cf. Ex 3:5)”, thus “*can make present the fragrance of Christ's closeness and his personal gaze*”, “which also heals, liberates and encourages growth in the Christian life” (EG 169).



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## HAPPY Women's Day

Wishing you whole lot of happiness  
And joy today and always.



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## Dismissal of Religious: Recent Modifications & Canonical Challenges



நன்றி! வணக்கம்! Thanks!

Prof. Rev. Dr. Jesu Pudumai Doss, SDB

Webinar - 8 March 2023

Faculty of Canon Law

St Paul University, Ottawa

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