

Recent Rotal Decisions in Penal Cases

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1. - Introduction: Every year at the Roman Rota we deal with few penal cases only, maximum nine cases in a single year.

The statistics of the pending cases at the end of every year starting from 2013 till 2023:

2013 – 5 cases; 2014 – 3 cases; 2015 – 1 case; 2016 – 2 cases;
2017 – 2 cases; 2018 – 5 cases; 2019 – 6 cases; 2020 – 7 cases;
2021 – 4 cases; 2022 – 6 cases; 2023 – 9 cases!

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Why do we have so few penal cases, while we have hundreds of marriage cases at the Roman Rota?

a) Some penal issues are resolved in the extrajudicial way (cfr. can. 1341 and 1342) and/or they are sorted out at the local level and so do not come to the ordinary appellate court of the Holy See i.e., the Roman Rota.

b) Dicastery for the Doctrine of Faith has the exclusive competence to deal with the *Delicta graviora, delicta contra fidem et contra mores*.

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c) And some other Dicasteries like those for the Clergy, for the Consecrated Life, for the Family and Life, for the Culture and Education, the Apostolic Penitentiary and the Tribunal of the Apostolic Signatura, deal with the recourses in the penal and disciplinary matters, according to their competence and/or the faculties conferred, through the administrative process.

d) Lastly, we can say that many Catholics are not aware of the Penal Code of the Church. And some others do not even report to the authorities the crimes that occurred to them or to their brethren, either out of ignorance or fear general and/or reverential.

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The Rotal decisions on penal matters are evidently so few that it might even seem difficult to delineate a true jurisprudence, in the classic sense. However, the decisions handed down by the Rotal Judges are of increasing interest for the in-depth study of the issues at stake. Therefore, they are useful to the students, scholars as well as the staff of the Tribunals at all levels.

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2. - Notion of delict and its elements:

- a. - The Code of Canon Law promulgated in the year 1983 does not give us any definition of delict, but its essential elements implicitly emerge from the can. 1321: **subjective and objective elements**: cf. sent. *coram* Monier of the 21st June 2002; **juridical element**: can. 221 § 3; cf. sent. *coram* Caberletti of the 9th March 2021. In the presence of several potentially applicable criminal provisions, the criterion of **specificity** must be applied: cf. sent. *coram* McKay of the 23rd July 2010. The principle of **fragmentarity** of the penal law, with particular reference to sexual offences: cf. sent. *coram* Arokiaraj of the 15th July 2020.

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b. - **Aggravating and mitigating elements**: A sentence *coram* Jaeger of the 28th June 2016 refers in particular to the aggravating circumstance of the abuse of authority or office (cf. can. 1326 § 1, 2°).

With regard to **the extenuating circumstances**, cf. sent. *coram* Caberletti of the 9th March 2021.

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c. - Functions and determination of the punishment: A

sentence *coram* Exc.mo Arellano Cedillo of the 7th July 2021 exposes the functions of the punishment: retributive, preventive general and special, on the basis of the classical doctrine.

In a decision, the punishment imposed must always be certain and specific and cannot consist of advice, wishes or exhortations, as stated in a sentence *coram* Vaccarotto, Jaeger *extensore*, of the 23rd June 2015.

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3. – Some crimes and the Rotal decisions:

a. - **Incitement to hatred against the Church** (can. 1369, present 1368): a sentence. *coram* Jaeger of the 28th June 2016 deals with the subject of «crimes of opinion».

b. - **Disobedience to the Ordinary** (can. 1371, 2; present 1371 § 1): sent. *coram* Bunge of the 22nd June 2021.

c. - **Incitement to hatred against the Ordinary** (can. 1373): sent. *coram* Jaeger of the 28th June 2016.

d. - **Illicit alienation of ecclesiastical goods** (can. 1377, present can. 1376 § 1, 2°): sent. *coram* McKay of the 23rd July 2010.

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e. - **Abuse or negligence in the exercise of the office** (can. 1389, present 1378): sent. *coram* McKay of the 20th June 2011.

f. - **Defamation** (can. 1390 §§ 2-3): A sentence *coram* McKay of the 18th February 2013, rendered in a contentious case *restitutionis bonae fama*e, summarizes the theological basis of this crime.

The Rotal jurisprudence clarifies that there can be no crime if the objective element, i.e., of good reputation, is absent, in case it has already been lost by the offended party; cf. sent. *coram* Jaeger of the 28th June 2016.

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A fact that can be considered consolidated in the Rotal jurisprudence is the autonomy of the compensatory contentious action with respect to that of the criminal one. In fact, several judgments have been delivered in *iurium* cases and only incidentally there has been cognizance of the offence, for the sole purpose of declaring compensation liability.

g. **Falsehood in a public ecclesiastical document** (can. 1391, 3°): sent. *coram* McKay of the 20th June 2011 clarifies its moral and juridical foundation and some conducts that lead to that crime.

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h. **Attempted marriage** (can. 1394): In the same sent. *coram* McKay of the 20th June 2011, the penalty imposed was that of dismissal from the clerical state.

i. **Concubinage** (can. 1395 § 1): The crimes against continence imposed on clerics represent an important part of the penal cases at the Rota; indeed, the quantitative difference with respect to the past, when the «crimes against morality» occupied a much smaller part, leaps to the eye.

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j. **Scandalous persistence in external sin against the Sixth Commandment** (can. 1395 § 1): a sent. *coram* Huber of the 26th February 2010 explains the constituent elements of this delict.

The Rotal sentences consider that, for the typification of external sinful conduct against the Sixth Commandment, reference should be made to the offences against chastity listed in the Catechism of the Catholic Church (cf. nn. 2351-2356), as further specified in the *Vademecum* of the Congregation for the Doctrine of the Faith of the 16th July 2020, equipped with appropriate explanatory value.

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k. Crimes against the sixth commandment committed with violence or threat or publicly (can. 1395 § 2, now can. 1395 §§ 2-3):

publicly: There are two different jurisprudential opinions in this regard. The sentence *coram* Huber of the 26th February 2010 seems to adopt precisely the first of the two interpretative options. The other line of interpretation is clearly expressed in the judgment *coram* Jaeger, Sable *extensore*, of the 4th March 2015; in the same sense, the judgment *coram* Arokiaraj of the 15th July 2020.

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In the same decision *coram* Arokiaraj there is an interesting reflection on the publicity or privateness of 'virtual' places that can be reached through the computer network (such as individual or group chats), which are so widely used nowadays as a way for people to meet. This judgement considers that the principles set out above can be analogically applied, deeming as private those virtual places (groups, conversations, etc.) whose access is not open to any Internet user, but controlled.

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with violence or threats: With regard to the crime against the sixth commandment committed with violence or threat, the Rotal jurisprudence has made significant contributions; indeed, it shows that it somewhat anticipates the systemic innovations introduced by the penal reform.

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In a sent. *coram* Heredia Esteban of the 22nd July 2015, reading the reconstruction of the facts does not reveal so much a use of force as to result in actual physical abuse, but rather a 'combination' of moral subjugation and executive shrewdness, capable of eluding any attempt at resistance or reaction on the part of the victim.

This element of 'surprise' that is capable of evading even the victim's free expression of dissent is interesting, because it is found again in the sent. *coram* Arokiaraj of the 17th March 2021, which presents innovative profiles both in the interpretation of the sinful act, and of the mode of execution that turns it into a crime.

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According to the above-mentioned decision, the threat could also be recognised, at least in an implicit and virtual sense, but nevertheless very concrete, considering the relationship of subjection between the victim and the offender: the woman performed cleaning services at the parish where the presbyter exercised his ministry. The object of intimidation could, in this case, easily be identified as the preservation of one's job, an element of such great importance in people's lives, to safeguard their dignity.

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Reading the above decisions allows one to appreciate the effort made the jurisprudence to extend the protection of people's freedom and self-determination in such a delicate sphere, without ignoring the advances in social awareness concerning these heinous crimes.

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Coming back to the sent. *coram* Arokiaraj of the 17th March 2021, I would like to underline a matter of great interest, i.e., it speaks of the possibility of the judge of the appellate Tribunal to re-qualify the crime with respect to how it was framed in the first instance. In this case, the court of first instance had qualified the action of the active subject under can. 1395 § 1; while the Rotal Turnus considers that it should be classified under can. 1395 § 2, as a crime committed with violence and threats. This sentence justifies this power of the appellate court with the following reasons:

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Firstly, by recalling a passage from Lega's well-known commentary, in which it is stated that, while illustrating the *quaestio facti* is up to the parties, its legal qualification, the *quaestio iuris*, is instead the responsibility of the judge. Secondly, it is recalled that even secular systems allow for a rectification or re-qualification of the charge from the specific point of view of law, of the law violated, attributing a different *nomen iuris* to the fact.

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The sentence makes also an analogy with the provisions of the second paragraph of Article 480 of the Code of Criminal Procedure for the Vatican City State, which allows the redefinition of the criminal case as long as it does not entail a *reformatio in peius* to the detriment of the accused. The application of such a possibility also in the canonical field, as it is just, would therefore be an expression of the nomophylactic function of the Rotal jurisprudence.

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l. **Serious injuries** (can. 1397, now 1397 § 1): sent. *coram* Huber of the 26th February 2010.

m. **Crimes punishable under can. 1399**: In the judgment *coram* McKay of the 23rd July 2010, it is emphasised that an indictment under can. 1399 is only to be used when an offence is not already a criminal offence under another norm, and therefore cannot be cumulated with any specific indictment.

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4. - Conclusion: The Roman Rota, with its institutional function of providing for the unity of jurisprudence (cf. art. 200 § 1 Ap. Const. *Praedicate Evangelium*), plays an irreplaceable role in this field of orientation and guidance in the judicial protection of individual and collective juridical goods, governed by the penal norms, and with its jurisprudence can provide - as it has historically been in matrimonial matters - impetus for the progress of doctrine and legislation itself.

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