Preliminary Investigation in Treating Cases of "More Grave Delicts Against Morals" Committed by Clerics (Sexual Abuse of Minors by Clerics)

Rev. Dr T. Lourdusamy

Norms Regarding Delicts Reserved to the Congregation for the Doctrine of the Faith (approved by Pope Francis on 11 October 2021 and came into effect on 7 December 2021):

> **Art. 10** §1 Whenever the Ordinary or Hierarch receives a report of a more grave delict, which has at least the semblance of truth, and **after having completed the preliminary investigation according to the norm of can. 1717 *CIC* and can. 1468 *CCEO***, he is to communicate the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch how to proceed further.

SST (2021) does not explain but refers to **can. 1717 *CIC*** and can. 1468 *CCEO* for conducting the "preliminary investigation":

> **Can. 1717 §1** Whenever the Ordinary receives information, which has at least the semblance of truth, about an offence, he is to enquire carefully, either personally or through some suitable person, about the facts and circumstances, and about the imputability of the offence, unless this enquiry would appear to be entirely superfluous.

While can 1717 §1 states in general that the preliminary investigation is "about an offence", Art 10 §1 of SST (2021) mentions that it is about "a more grave delict". The "more grave delicts" are prescribed in Arts. 2-6 (SST 2021).

For our study, we have taken the preliminary investigation of "The more grave delicts against morals" Art. 6 of SST (2021).

I. What constitutes the delict?

SST (2021) Art. 6 The more grave delicts against morals which are reserved to the judgment of the Congregation for the Doctrine of the Faith are:

1° the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years or with a person who habitually has the imperfect use of reason; ignorance or error on the part of the cleric regarding the age of the minor does not constitute an extenuating or exonerating circumstance;

- This article purely pertains to clerics and deals with the delict committed by a cleric
- with minor below the age of 18 years (error or ignorance of age of the minor doesn't justify the act nor it absolves the cleric)
- with a person who habitually has the imperfect use of reason
  - It has to be habitual (continuous), not transitory/occasional.
  - If there is no habituality, the delict doesn't come under the jurisdiction of CDF.
  - SST does not prescribe "complete lack of use of reason". It is enough that the use of reason is imperfect which means, there is a decline in ability of intellect and will.
- Delict against 6th commandment
  - completed sexual intercourse
  - sexual intercourse with or without violence
  - to make the minor undergo sexual acts other than intercourse
    - masturbating holding the minor's private organs
    - make minor masturbate you
  - The cleric browses the pornographic sites in front of the minor and makes the minor to browse them
  - Sensual kissing

- ✓ *Vademecum* (no.2) gives a broad typology of the delict: for example, "sexual relations (consensual or non-consensual), physical contact for sexual gratification, exhibitionism, masturbation, the production of pornography, inducement to prostitution, conversations and/or propositions of a sexual nature, which can also occur through various means of communication".

2° the acquisition, possession, exhibition, or distribution, for purposes of sexual gratification or profit, of pornographic images of minors under the age of eighteen years, in any manner and by any means whatsoever, by a cleric.

- Besides delicts against the sixth commandment mentioned in 1°, Art. 6 of SST (2021) enumerates 4 types of actions in regard to pornographic images of minors under the age of eighteen years:
  - **a) Acquisition** (to acquire - *comparatio*)
    - by downloading:
      - Entering a site and download on payment or for free
      - This download must be voluntary and conscious
      - It doesn't matter how one downloads
    - one can acquire it from others (through pen drive, hard disc, mobile)
  - **b) Possession** (to retain - *detentio*)
    - One possesses it so that it is available to him/her in near future
  - **c) Exhibition**
    - After acquiring and possessing the pornographic images of minors under the age of eighteen years, one shows them to others or exhibits in e.g. YouTube, WhatsApp, etc.
  - **d) Distribution** (dissemination)
    - One distributes these pornographic images to others freely or for payment
    - Distribution can be to one person or to many
- Acquisition, possession, exhibition, or distribution is done for the motive of:
  - Sexual gratification or,
  - Purpose of profit
- Acquisition, possession, exhibition, or distribution is done:
  - In any manner and
  - With any instrument: through print or digital media

II. What must be done when information is received about a possible delict (*notitia de delicto*)?

2.1 What is meant by the term *notitia de delicto*?

A *notitia de delicto* (cf. canon 1717 § 1 CIC; canon 1468 § 1 CCEO; art. 6 SST (2021); *Vademecum*, 3), occasionally called *notitia criminis*, consists of <u>any information about a possible delict (for our study, "the more grave delicts against morals") that in any way comes to the attention of the Ordinary or Hierarch</u>. It need not be a formal complaint (*Vademecum*, 9).[1]

[1] Elias Frank, "The Preliminary Investigation in Light of the CDF Vademecum", in *Studies in Church Law*, 15 (2020) 54-55: It is important to note that "receiving information about a delict" is not the same thing as "a formal complaint" or "introduction of a case" (cf. cann. 1501-1503 CIC; cann. 1104 §2; 1185-1186 CCEO), which requires a certain form (cf. can. 1504 CIC; can. 1187 CCEO). "Receiving information about an offence", as stated in can. 1717 §1, does not immediately give rise to the constitution of a tribunal or a commission in order to process the offence. The Ordinary needs to verify many factors before initiating such a process. Therefore, the receiving of information does not call for any specific form (Vademecum, 9).

2.2 Which can be the sources of *notitia de delicto*?

This *notitia* can come from a variety of sources:

- it can be formally presented to the Ordinary or Hierarch, orally or in writing, by the alleged victim, his or her guardians or other persons claiming to have knowledge about the matter;
- it can become known to the Ordinary or Hierarch through the exercise of his duty for vigilance;
- it can be reported to the Ordinary or Hierarch by the civil authorities through channels provided for by local legislation;
- it can be made known through the communication media (including social media, WhatsApp, Facebook, Email, etc);
- it can come to his knowledge through hearsay, or in any other adequate way (*Vademecum*, 10; cf. also, Vos Estis Lux Mundi, 3 §2).

2.2.1 What to do if the source is anonymous from unidentified or unidentifiable persons, or from incredible persons, or if *notitia* lacks specific details?

There are instances where someone may provide information but intends to remain anonymous due to some reasons. He/she may have strong evidences of *delicto* of a particular person but may not want to be drawn into trial or to any conflicts.

At times, a *notitia de delicto* can derive from an anonymous source, namely, from unidentified or unidentifiable persons. The anonymity of the source should not automatically lead to considering the report as false. Nonetheless, for easily understandable reasons, great caution should be exercised in considering this type of *notitia,* and anonymous reports certainly should not be encouraged (*Vademecum*, 11).

Likewise, when a *notitia de delicto* comes from sources whose credibility might appear at first doubtful, it is not advisable to dismiss the matter *a priori* (*Vademecum*, 12).

At times, a *notitia de delicto* may lack specific details (names, dates, times…). Even if vague and unclear, it should be appropriately assessed and, if reasonably possible, given all due attention (*Vademecum*, 13).

2.2.2 If a *delictum gravius* is revealed in the confession?

A confessor is bound by sacramental seal (cf. can. 983 § 1 CIC; can. 733 § 1 CCEO), therefore, should never inform anyone, neither ecclesiastical nor civil authority, whatever he learnt in the act of confession, whether penitent was absolved or not; even if the penitent asks the confessor to do so (cf. can. 1550 §2, 2° CIC; 1231 §2, 2° CCEO). However, a confessor who learns of a *delictum gravius* during the celebration of the sacrament should seek to convince the penitent to make that information known by other means, in order to enable the appropriate authorities to take action (*Vademecum*, 14).

2.2.3 Systems to receive Reports

Vos Estis Lux Mundi prescribes that there should be some offices established in each diocese to receive these reports: "[…] the dioceses […] individually or together, must establish within a year from the entry into force of these norms, one or more public, stable and easily accessible systems for submission of reports, even through the institution of a specific ecclesiastical office (Art. 2 §1)".

2.3 What to do when there is no semblance of truth?

The precondition to initiate the preliminary inquiry is that *notitia de delicto* "at least" must have a "semblance of truth" (Art. 10 SST (2021); cf. also canons 1717 CIC and 1468 CCEO)

Given the sensitive nature of the matter (for example, the fact that sins against the sixth commandment of the Decalogue with a minor rarely occur in the presence of witnesses), a determination that the *notitia* lacks the semblance of truth (which can lead to omitting the preliminary investigation) will be made only in the case of the manifest impossibility of proceeding according to the norms of canon law.

For example:

- if it turns out that at the time of the delict of which he is accused, the person was not yet a cleric;
- if it comes to light that the presumed victim was not a minor;
- if it is a well-known fact that the person accused could not have been present at the place of the delict when the alleged action took place (*Vademecum*, 18).

In these cases, care should be taken to keep the documentation (cf. can. 1719), together with a written explanation regarding the reasons for the decision of the omission (*Vademecum*, 16). However, it is advisable that the Ordinary or Hierarch communicate to the CDF the *notitia de delicto* and the decision made to forego the preliminary investigation due to the manifest lack of the semblance of truth (*Vademecum*, 19).

2.4 When can the preliminary investigation superfluous?

The preliminary investigation would be superfluous in three different ways: a) the initial knowledge of delict is authenticated; b) the initial knowledge of the delict is so strong that it does not require further investigation; c) the initial knowledge does not lack authenticity but seems to be vague which does not offer an opportunity for further investigation.

If the results of civil investigations (or of an entire trial before a tribunal of the State) are acquired, then, the preliminary canonical investigation is unnecessary. Due care must be taken, however, by those who must carry out the preliminary investigation to examine the civil investigation, since the criteria used in the latter (with regard, for example, to terms of prescription, the typology of the crime, the age of the victim, etc.) can vary significantly with respect to the norms of canon law. In these situations, in case of doubt, it can be advisable to consult with the CDF (*Vademecum*, 36).

The preliminary investigation could also prove unnecessary in the case of a notorious and indisputable crime; or, when the cleric himself admits the delict (*Vademecum*, 37).

2.5 Who is responsible to do the preliminary investigation?

2.5.1 When the Ordinary receives the *notitia de delicto*:

When the Ordinary or Hierarch receives the *notitia de delicto*, it is his responsibility to begin the preliminary investigation either by himself or through a suitable person selected by him (can. 1717 CIC and can. 1468 CCEO). The eventual omission of this duty could constitute a delict subject to a canonical procedure in conformity with the Code of Canon Law and the Motu Proprio *Come una madre amorevole*, as well as art. 1 § 1, b of *Vos Estis Lux Mundi* (*Vademecum*, 21).

2.5.2 When the Ordinary of the accused cleric is different from the Ordinary of the place where the alleged delict took place:

- The Ordinary who received the information is the Ordinary of the place where the alleged delicts took place and also the proper Ordinary of the cleric reported. He will start the preliminary investigation.
- If the Ordinary who received the information is neither the Ordinary of the place where the alleged delicts took place nor the proper Ordinary of the cleric reported, then, he has to pass it on to both the latter Ordinaries. But, the Ordinary of the place where the alleged delicts took place will start the preliminary investigation.
- If the information is received by the proper Ordinary of the cleric reported, then, he has to pass it on to the Ordinary of the place where the alleged delicts took place. The latter will start the preliminary investigation.
- It will naturally be helpful if there is communication and cooperation between the different Ordinaries involved, in order to avoid conflicts of competence or the duplication of labour, particularly if the cleric is a religious (*Vademecum*, 22).
- If the Ordinary or Hierarch of the place where the events were said to have occurred is different from the proper Ordinary or Hierarch of the person reported, namely, in the case of a religious, his major Superior, it is preferable that they contact each other to determine which of them will carry out the investigation. In cases where the report concerns a member of an Institute of Consecrated Life or a Society of Apostolic Life, the major Superior will also inform the supreme Moderator and, in the case of Institutes and Societies of diocesan right, also the respective Bishop (*Vademecum*, 31).

2.5.3 In case of any difficulties to the preliminary investigation:

The Ordinary or Hierarch should immediately contact the CDF for advice or help in resolving any eventual questions (*Vademecum*, 23).

2.5.4 When the *notitia de delicto* comes directly to the CDF and not through the Ordinary:

If *notitia de delicto* comes directly to the CDF and not through the Ordinary or Hierarch, the *CDF* can ask the latter to carry out the investigations or, in accordance with art. 10 §3 SST (2021), the CDF itself can carry them out these (*Vademecum*, 24), or CDF can also ask any other Ordinary or Hierarch to carry out the preliminary investigation (*Vademecum*, 25).

2.6 What is the legal Prescription in *delictum gravius*?

SST (2021) Art. 8 §1 Criminal action concerning delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by prescription after twenty years.

§2 Prescription runs according to the norm of can. 1362 §2 CIC and can. 1152 §3 CCEO. However, in the case of the delict mentioned in art. 6 n. 1, prescription begins on the day the minor reaches the age of eighteen and continues for twenty years, i.e., 18 + 20.

§3 The Congregation for the Doctrine of the Faith has the right to derogate from prescription for all individual cases of reserved delicts, even if they regard delicts committed prior to the coming into force of the present Norms.

If the *notitia de delicto* is received after the lapse of prescription period: Since art. 8 §3 SST (2021) permits the CDF to derogate from prescription in individual cases, an Ordinary or Hierarch who has determined that the time for prescription has elapsed in an individual case must still respond to the *notitia de delicto* and carry out the eventual preliminary investigation, communicating its results to the CDF, which is competent to decide whether prescription is to be

retained or to grant a derogation from it. In forwarding the acts, it would be helpful for the Ordinary or Hierarch to express his personal opinion regarding an eventual derogation, basing it on concrete circumstances (e.g., cleric's health status or age, cleric's ability to exercise right of self-defence, harm caused by the alleged criminal act, scandal given) (*Vademecum*, 28).

2.7 Can the information gathered from the preliminary investigation be revealed to the public?

Vademecum, 29 states that "In these sensitive preliminary acts, the Ordinary or Hierarch can seek the advice of the CDF and freely consult with experts in canonical penal matters. In the latter case, however, care should be taken to avoid any inappropriate or illicit diffusion of information to the public that could prejudice successive investigations or give the impression that the facts or the guilt of the cleric in question have already been determined with certainty".

2.8 Can an obligation of silence be imposed in the person who reported?

An obligation of silence about the allegations cannot be imposed on the one reporting the matter, on a person who claims to have been harmed, and on witnesses (*Vademecum*, 30).[2]

III. How does the preliminary investigation take place?

The preliminary investigation takes place in accordance with the criteria and procedures set forth in can. 1717 CIC or can. 1468 CCEO and according to the following procedure (*Vademecum*, 32).

3.1 What is the preliminary investigation?

i. It must always be kept in mind that the preliminary investigation is not a trial, nor does it seek to attain moral certitude as to whether the alleged events have occurred. It serves:
   a. to gather data useful for a more detailed examination of the *notitia de delicto*;
   b. to determine the plausibility of the report, that is, to determine whether there is *fumus delicti*, namely the sufficient basis both in law and in fact so as to consider the accusation as having the semblance of truth (*Vademecum*, 33).

ii. The preliminary investigation should gather detailed information about the *notitia de delicto* with regard to facts, circumstances and imputability.

iii. It is not necessary at this phase to assemble complete elements of proof (e.g., testimonies, expert opinions), since this would be the task of an eventual subsequent penal procedure.

iv. The important thing is to reconstruct, to the extent possible, the facts on which the accusation is based, the number and time of the criminal acts, the circumstances in which they took place and general details about the alleged victims, together with a preliminary evaluation of the eventual physical, psychological and moral harm inflicted.

v. Care should also be taken to determine any possible relation to the sacramental internal forum.

vi. If, in the course of the preliminary investigation, other *notitiae de delicto* become known, these must also be looked into as part of the same investigation (*Vademecum*, 35), as well as any indication of problematic facts emerging from biographical profile of the person accused.

[2] Art. 28 §1 of SST (2021): "With the exception of allegations, processes, and decisions concerning the delicts mentioned in art. 6, cases involving delicts regulated by these norms are subject to the pontifical secret."

vii. It can be useful to assemble testimonies and documents, of any kind or provenance (including the results of investigations or trials carried out by civil authorities), which may in fact prove helpful for substantiating and validating the plausibility of the accusation.

viii. It is likewise possible at this point to indicate eventual exempting (cf. can. 1323), diminishing (cf. can. 1324), mitigating (cf. can. 1325) or aggravating factors (cf. can. 1326), as provided for by law.

ix. It could also prove helpful to collect at this time testimonials of credibility with regard to the complainants and the alleged victims (*Vademecum*, 34).

x. An Appendix to the present *Vademecum* contains a schematic outline of useful data to carry out the preliminary investigation.

3.2 What juridical acts must be carried out to initiate the preliminary investigation?

i) Appointment of the person to carry out the investigation: Can. 1717 §1 prescribes that the competent Ordinary or Hierarch can make the preliminary investigation either personally or through some suitable person. If he considers it appropriate to appoint another suitable person, he is to select him or her using the criteria indicated by canons 1428 §§ 1-2 CIC or 1093 CCEO (*Vademecum*, 38). The cooperation of lay people also can be sought in this regard (cf. cann. 228 CIC and 408 CCEO; art. 13 *Vos Estis Lux Mundi*). However, the Ordinary or Hierarch should keep in mind that, according to cann. 1717 § 3 CIC and 1468 § 3 CCEO, if a penal judicial process is then initiated, that same person cannot act as a judge in the matter in the judicial process and also, cannot be appointed as delegate and assessor in the case of an extrajudicial process (*Vademecum*, 39).

ii) Decree Opening the Preliminary Investigation: In accordance with canons 1719 CIC and 1470 CCEO, the Ordinary or Hierarch is to issue a decree opening the preliminary investigation, in which he names the person conducting the investigation and indicates in the text that he or she enjoys the powers referred to in canon 1717 § 3 CIC or 1468 § 3 CCEO (*Vademecum*, 40).

iii) Appointment of Notary: Although not expressly provided for by law, it is advisable that a priest notary be appointed (cf. cann. 483 § 2 CIC and 253 § 2 CCEO, where other criteria are indicated for the choice), who assists the person conducting the preliminary investigation, for the purpose of ensuring the authenticity of the acts which have been drawn up (cf. cann. 1437 § 2 CIC and 1101 § 2 CCEO) (*Vademecum*, 41). However, since these are not the acts of a process, the presence of the notary is not necessary for their validity (*Vademecum*, 42).

3.3 What complementary acts can or must be carried out during the preliminary investigation?

Protection of the good name of the persons involved (the accused, alleged victims, witnesses) (cf. cann. 1717 § 2 CIC and 1468 § 2 CCEO, and articles 4 § 2 and 5 § 2 *Vos Estis Lux Mundi*). The one who carries out the preliminary investigation must be particularly careful to take every possible precaution to this end, since the right to a good name is one of the rights of the faithful upheld by cann. 220 CIC and 23 CCEO. It should be noted, however, that those canons protect that right from illegitimate violations. Hence, should the common good be endangered, the release of information about the existence of an accusation does not necessarily constitute a violation of one's good name. Furthermore, the persons involved are to be informed that in the event of a judicial seizure or a subpoena of the acts of the investigation on the part of civil authorities, it will no longer be possible for the Church to guarantee the confidentiality of the depositions and documentation acquired from the canonical investigation (*Vademecum*, 44).

In cases where public statements must be made: In any event, especially in cases where public statements must be made, great caution should be exercised in providing information about the facts. Statements should be brief and concise, avoiding clamorous announcements, refraining

completely from any premature judgment about the guilt or innocence of the person accused (since this is to be established only by an eventual penal process aimed at verifying the basis of the accusation), and respecting any desire for privacy expressed by the alleged victims (*Vademecum*, 45).

No public statements in the name of the Church, **the Institute/Society**: At this stage, the possible guilt of the accused person has yet to be established, and therefore, all care should be taken to avoid – in public statements or private communication – any affirmation made in the name of the Church, the Institute or Society, or on one's own behalf, that could constitute an anticipation of judgement on the merits of the facts (*Vademecum*, 46).

If and when to inform the person being accused: During the investigative process, the Ordinary of Hierarch is to decide if and when to inform the person being accused (*Vademecum*, 52).

In this regard, there is no uniform criterion or explicit provision in law. An assessment must be made of all the goods at stake: in addition to the protection of the good name of the persons involved, consideration must also be given, for example, to the risk of compromising the preliminary investigation or giving scandal to the faithful, and the advantage of collecting beforehand all evidence that could prove useful or necessary (*Vademecum*, 53).

Advocate for the accused: Since this is a preliminary phase prior to a possible process, it is not obligatory to name an official advocate for him, even if a decision be made to question the accused person. If he considers it helpful, however, he can be assisted by a patron of his choice. An oath cannot be imposed on the accused person (cf. *ex analogia*, cann. 1728 § 2 CIC and 1471 § 2 CCEO) (*Vademecum*, 54).

Support to the alleged victim and his or her family: The ecclesiastical authorities must ensure that the alleged victim and his or her family are treated with dignity and respect, and must offer them welcome, attentive hearing and support, also through specific services, as well as spiritual, medical and psychological help, as required by the specific case (cf. art. 5 *Vos Estis Lux Mundi*). The same can be done with regard to the accused (*Vademecum*, 55).

Freedom of the alleged victim to exercise his or her civil rights and to consult civil and ecclesiastical authorities: The alleged victim should be absolutely free to exercise of his or her civil rights vis-à-vis the civil authorities (*Vademecum*, 56). Where there exists state or ecclesiastical structures of information and support for alleged victims, or of consultation for ecclesial authorities, it is helpful also to refer to them. The purpose of these structures is purely that of advice, guidance and assistance; their analyses do not in any way constitute canonical procedural decisions (*Vademecum*, 57).

3.4 Precautionary Measures:

To defend the good name of the persons involved and to protect the public good, as well as to avoid other factors (for example, the rise of scandal, the risk of concealment of future evidence, the presence of threats or other conduct meant to dissuade the alleged victim from exercising his or her rights, the protection of other possible victims), in accordance with art. 10 § 2 SST (2021), the Ordinary or Hierarch has the right, from the outset of the preliminary investigation, to impose the precautionary measures listed in canons 1722 CIC[3] and 1473 CCEO. (*Vademecum*, 58).

The precautionary measures are imposed by a singular precept, legitimately made known (cf. cann. 49ff. and 1319 CIC and 1406 and 1510ff. CCEO) (*Vademecum*, 64).

[3] **Can. 1722** At any stage of the process, in order to prevent scandal, to protect the freedom of witnesses, and safeguard the course of justice, the Ordinary can, after consulting the promoter of justice and summoning the accused person to appear, prohibit the accused from the exercise of the sacred ministry or pf some ecclesiastical office and position, or impose or forbid residence in a certain place or territory, or even prohibit public participation in the blessed Eucharist. If, however, the reason ceases, all these restrictions are to be revoked; they cease by virtue of the law itself as soon as the penal process ceases.

The precautionary measures found in these canons constitute a taxative list, in other words, only one or more of those delineated can be chosen (*Vademecum*, 59).

This does not prevent the Ordinary or Hierarch from imposing other disciplinary measures within his power, yet these cannot be strictly defined as "precautionary measures" (*Vademecum*, 60).

How are precautionary measures imposed? First, it should be stated that a precautionary measure is not a penalty (since penalties are imposed only at the end of a penal process), but an administrative act whose purposes are described by cann. 1722 CIC and 1473 CCEO. It should be clearly explained to the party in question that the measure is not penal in nature, lest he thinks that he has already been convicted and punished from the start. It must also be emphasized that precautionary measures must be revoked if the reason for them ceases and that they themselves cease with the conclusion of the eventual penal process. Furthermore, they can be modified (made more or less severe), if circumstances so demand. Still, particular prudence and discernment is urged in judging whether the reason that suggested them has ceased; nor is it excluded that – once revoked – they can be re-imposed (*Vademecum*, 61).

Different terminologies - *suspensio a divinis*/ *suspensio a divinis*: It has been noted that the older terminology of *suspensio a divinis* is still frequently being used to refer to the prohibition of the exercise of ministry imposed on a cleric as a precautionary measure. It is best to avoid this term, and that of *suspensio ad cautelam*, since in the current legislation suspension is a penalty, and cannot yet be imposed at this stage. The provision would more properly be called, for example, *prohibition* from the exercise of the ministry (*Vademecum*, 62).

Transfer of the accused cleric: A decision to be avoided is that of simply transferring the accused cleric from his office, region or religious house, with the idea that distancing him from the place of the alleged crime or alleged victims constitutes a sufficient solution of the case (*Vademecum*, 63).

Modification or Revocation of the precautionary measures: It should be noted that whenever a decision is made to modify or revoke precautionary measures, this must be done by a corresponding decree, legitimately made known. This will not be necessary, however, at the conclusion of the possible process, since at that moment those measures cease to have legal effect (*Vademecum*, 65).

3.5 What must be done to conclude the preliminary investigation?

No unjustified delay: It is recommended, for the sake of equity and a reasonable exercise of justice, that the duration of the preliminary investigation correspond to the purpose of the investigation, which is to assess the plausibility of the *notitia de delicto* and hence the existence of the *fumus delicti*. An unjustified delay in the preliminary investigation may constitute an act of negligence on the part of ecclesiastical authority (*Vademecum*, 66).

Handing over the acts of investigation: If the investigation has been carried out by a suitable person appointed by the Ordinary or Hierarch, he or she is to consign all the acts of the investigation, together with a personal evaluation of its results (*Vademecum*, 67).

Decree of the conclusion of the preliminary investigation: In accordance with cann. 1719 CIC and 1470 CCEO, the Ordinary or Hierarch must issue a decree that the preliminary investigation is concluded (*Vademecum*, 68).

Acts to be transmitted to CDF along with the *votum* of the Ordinary: In accordance with art. 10 § 1 SST (2021), once the preliminary investigation has concluded, whatever its outcome be, the Ordinary or Hierarch is obliged to send, without delay, an authentic copy of the relative acts to the CDF. Together with the copy of the acts and the duly completed form found at the end of *Vademecum*, he is to provide his own evaluation of the results of the investigation (*votum*) and to offer any suggestions he may have on how to proceed (if, for example, he considers it appropriate to initiate a penal procedure and of what kind; if he considers sufficient the penalty imposed by the civil authorities; if the application of administrative measures by the Ordinary or

Hierarch is preferable; if the prescription of the delict should be declared or its derogation granted) (*Vademecum*, 69).

Transmission of the acts also to the major Superior if the accused is a religious: In cases where the Ordinary or Hierarch who carried out the preliminary investigation is a major Superior, it is best that he likewise transmits a copy of all documentation related to the investigation to the supreme Moderator (or to the relative Bishop in the case of Institutes or Societies of diocesan right), since they are the persons with whom the CDF will ordinarily communicate thereafter. For his part, the supreme Moderator will send to the CDF his own *votum* (*Vademecum*, 70).

Transmission of the acts to the Ordinary of the place where the alleged delict was committed: Whenever the Ordinary who carried out the preliminary investigation is not the Ordinary of the place where the alleged delict was committed, he is to communicate to the latter the results of the investigation (*Vademecum*, 71).

Other details about the acts to be sent to CDF: The acts are to be sent in a single copy; it is helpful if they are authenticated by a notary who is a member of the curia, unless a specific notary had been appointed for the preliminary investigation (*Vademecum*, 72).

Original Acts to be kept in the archive: Cann. 1719 CIC and 1470 CCEO state that the original of all the acts is to be kept in the secret archive of the curia (*Vademecum*, 73).

Response from CDF: According to art. 10 § 1 SST (2021), once the acts of the preliminary investigation have been sent to the CDF, the Ordinary or Hierarch is to await communications or instructions in this regard from the CDF (*Vademecum*, 74).

In case of new accusations after the preliminary investigation: If other elements related to the preliminary investigation or new accusations should emerge after sending the acts to CDF, these are to be forwarded to the CDF as quickly as possible, in order to be added to what is already in its possession. If it appears useful to reopen the preliminary investigation on the basis of those elements, the CDF is to be informed immediately (*Vademecum*, 75).

IV. Preliminary Investigation and Civil Authorities

1. Do the civil authorities be informed by the Ordinary upon receiving a *notitia de delicto*?

"Even in cases where there is no explicit legal obligation to do so, the ecclesiastical authorities should make a report to the competent civil authorities if this is considered necessary to protect the person involved or other minors from the danger of further criminal acts" (*Vademecum*, 17).

Two principles can be applied in this situation: a) respect for the laws of the state (cf. art. 19 *Vos Estis Lux Mundi*); and b) respect for the desire of the alleged victim, provided that this is not contrary to civil legislation.

2. If the Civil Authorities do simultaneous preliminary investigation?

- The preliminary canonical investigation must be carried out independently of any corresponding investigation by the civil authorities.
- In those cases where state legislation prohibits investigations parallel to its own, the ecclesiastical authorities should refrain from initiating the preliminary investigation and report the accusation to the CDF, including any useful documentation.
- In cases where it seems appropriate to await the conclusion of the civil investigations in order to acquire their results, or for other reasons, the Ordinary or Hierarch would do well to seek the advice of the CDF in this regard (*Vademecum*, 26).
- The investigation should be carried out with respect for the civil laws of each state (cf. art. 19, 27 *Vademecum*).

3. Can the person who reports to ecclesiastical authorities report also to the civil authorities?

If the persons reporting to ecclesiastical authorities also intend to inform the civil authorities – making public their actions – they cannot be prevented from doing so.

Alleged victims should be encouraged to exercise their duties and rights vis-à-vis the state authorities and it must be carefully documented that the alleged victim was never dissuaded, instead encouraged to do so (*Vademecum*, 48).

"*When the laws of the state require the Ordinary or Hierarch to report a notitia de delicto, he must do so*, even if it is expected that on the basis of state laws no action will be taken (for example, in cases where the statute of limitations has expired or the definition of the crime may vary)" (*Vademecum*, 49).

"Whenever civil judicial authorities issue a legitimate executive order requiring the surrender of documents regarding cases, or order the judicial seizure of such documents, the Ordinary or Hierarch must cooperate with the civil authorities. If the legitimacy of such a request or seizure is in doubt, the Ordinary or Hierarch can consult legal experts about available means of recourse. In any case, it is advisable to inform the Papal Representative immediately" (*Vademecum*, 50).

"In cases where it proves necessary to hear minors or persons equivalent to them, the civil norms of the country should be followed, as well as methods suited to their age or condition, permitting, for example, that the minor be accompanied by a trusted adult and avoiding any direct contact with the person accused" (*Vademecum*, 51).

****