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On the topic

The Administrative Penal Process
A Juridical Examination

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THE ADMINISTRATIVE PENAL PROCESS

A JURIDICAL EXAMINATION

Introduction

The ecclesiastical penal procedure which is legislated in the 1983 CIC is developed into two phases: the previous phase (cann. 1717-1719) and the proper penal process; However, both of them are distinct to each other. The proper, true penal process (in the strict sense) is of two kinds: Judicial penal process and the Extra-judicial penal process or administrative penal process.[1] Though this paper focuses mainly on the proper penal process especially on the administrative penal process, it could be better to have some knowledge about the previous phase prior to the penal process due to the reason that any way of penal process (either judicial or extra-judicial) is to be decided on the information collected through the previous phase.

1. **The Previous Phase**

This previous phase prior to the course of penal process could be dealt into three levels as follows:

1. The preliminary investigation
2. The other preliminary measures (the appeal of pastoral means)
3. The decision of the Ordinary regarding a penal process.

1.1 The Preliminary Investigation

The above-mentioned three levels of previous phase, prior to the course of penal process, are equally and legally important. It is felt that the order of these three levels is to be maintained accordingly. The first level, the preliminary investigation, is to be maintained as the first step in accordance with the norms of can. 1717[2] and the second level, the other preliminary measures, is to be maintained as the second step in accordance with the norms

[1] A. MIZIŃSKI , "L'indagine Previa (cann. 1717-1719)" in Z. SUCHECKI (ed.), *IL processo penale canonico*, Latrenese Università Press, Roma 2000, p. 159: *"Il processo penale ecclesiastico si svolge in due fasi legate tra loro, ma perfettamente distinte: l'indagine preliminare (praevia investigatio) e il processo vero e proprio (sensu stricto), di carattere amministrativo o giudiziale."*

[2] See can. 1717: § 1

of can. 1341.[3] The third level, the decision of the Ordinary regarding penal process, is to be dealt as the third step in accordance with the norms of can. 1718.[4] Here, it is to be noted that the third level cannot be observed as the first step and the first level vice verse.

Among the above mentioned three levels of previous phase, the preliminary investigation stands in the first level distinctively. This preliminary investigation is a previous phase but distinct from the penal process and is clearly the most critical stage of the entire penal process.[5] Author Astigueta also comments on the importance of the preliminary investigation as follows:

> However, I would like to make a reference from the beginning that all the proceedings of the penal process, either judicial or administrative, depend on how the preliminary investigation is made. When certain problems occur in the preliminary phase, these problems can cause for danger in all the proceedings that follow.[6]

It is obvious from the above mentioned comment that the preliminary investigation plays an important role in the proceedings of penal process. This investigation is to complete certain actions like determining the probable existence of an alleged delict, determining the probable presence of the imputability of the accused to the alleged delict and collecting certain elements about the facts, circumstances and the imputability of an alleged delict. However, this preliminary investigation is not considered as the proper penal process, but is considered only as a preparatory proceeding[7] for the proper penal process which is to be held later. Another element is to be noted that this preliminary investigation is established as a preparatory proceeding both for the judicial penal procedure and administrative penal procedure.[8]

1.2 The Other Preliminary Measures

Once the preliminary and supplementary investigation (if there is) is completed, the Ordinary has got predominant role to evaluate the collected elements and he may have three possibilities to decide upon a case in accordance with can. 1718, § 1 which states:[9]

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[3] See can. 1341

[4] See can. 1718: §1

[5] See G. INGELS, "Dismissal from the clerical state. An examination of the penal process", *Studia canonica* 33 (1999), p. 171: "The prior investigation is the first phase of the penal process and is clearly the most critical stage of the entire penal procedure. [...]".

[6] D.G. ASTIGUETA, "L'investigazione previa", in A. D'AURIA – C. PAPALE (eds.), *I delitti riservati alla congregazione per la dottrina della fede*, Quaderni di Ius Missionale, Vol.3, Urbaniana University Press, Roma 2014, p. 79.

[7] See A. MIZIŃSKI , "L'indagine Previa (cann. 1717-1719)" in Z. SUCHECKI (ed.), *IL processo penale canonico*, p. 161.

[8] See J. SANCHIS, p. 237.

[9] Can. 1718, § 1.

> §1 When the facts have been assembled, the Ordinary is to decree: 1° whether a process to impose or declare a penalty can be initiated; 2° whether this would be expedient, bearing in mind can. 1341; 3° whether a judicial process is to be used or, unless the law forbids it, whether the matter is to proceed by means of an extra-judicial decree.

Among the above-mentioned three possibilities, the Ordinary has to discern any one of these possibilities according to the result of the evaluation of those collected elements. Then he has to decree to further the case.

On the result of the evaluation of those collected elements, if there are indications that there is no real foundation for a delict or perhaps there are certain indications of a delict but there is no solid evidence of an ecclesiastical delict, then a penal process may not be warranted. In the case of unwarranted a penal process, all the acts of the investigation and all the decrees of the Ordinary related to the preliminary investigation are to be kept in the secret curial archives in accordance with can. 1719.[10] On the contrary, if the result of the evaluation of the preliminary investigation indicates that there is a real foundation of a delict and there exists certain solid evidences of a delict, then there arises the need of a penal process. Even if a penal process may be warranted, the Ordinary may not at once decree for a penal process, since can. 1718, § 1, 2° prescribes to look into the other pastoral means to correct the delinquents in accordance with can. 1341, which states:[11]

> The Ordinary is to start a judicial or an administrative procedure for the imposition or the declaration of penalties only when he perceives that neither by fraternal correction nor reproof, nor by any method of pastoral care, can the scandal be sufficiently repaired, justice restored and the offender reformed.

Here, it is to be noted that the law giver was very keen to give preference to the pastoral means of correcting the delinquents before applying the penalty. This aspect is well expressed in can. 1341 in the context of the application of penalty and in can. 1718, § 1, 2° in the context of penal process. Based on these canonical norms, many canonists have taken the position of pastoral means of correcting the delinquents before entering into the penal process.[12] Hence, it would be a good approach to agree with the position of taking the pastoral means of correcting the delinquents before initiating the penal process due to the reason that the pastoral means shall give more fruits and to consider the penalty as a last resort.

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[10] See can. 1719.

[11] Can. 1341.

[12] See D.G. ASTIGUETA, "L'investigazione previa", in A. D'AURIA - C. PAPALE (eds.), *I delitti riservati alla Congregazione per la Dottrina della Fede*, p. 104; In the same sense, see also Z. SUCHECKI, "Il processo penale guidiziario", in Z. SUCHECKI (ed.), *Il processo penale canonico*, p. 224.

Can. 1341 specifically indicates two kinds of pastoral approaches namely fraternal correction[13] and reproof [14] to be used by the Ordinary before entering into the penal process. It is to be mentioned that the fraternal correction, which is not a penal remedy, is different from the reproof, which is in fact used as a penal remedy.[15] The same canon speaks of any other methods of pastoral care to attain the purpose of penalty. Any other methods of pastoral care could be like indicating some special moments of reflections and prayers, some voluntary services like visiting the sick and aged people, revoking some faculties (like faculty of confession), imposing certain limit to do some pastoral services and etc. Then pastoral means mentioned in can. 1341 are to be used here in the context of application of penalty in order to maintain the purpose of penalty, that is, to repair the scandal, to restore the justice and to reform the offender.

1.3 The Decision of the Ordinary on Penal Process

After the preliminary investigation, when the above discussed pastoral means do not serve adequately to repair the scandal, to restore the justice and to reform the offender, then the Ordinary may go for choosing either judicial penal process or administrative penal process in order to impose or declare a penalty in accordance with can. 1341.

Here, it is to be noted that once the Ordinary identifies the inadequate pastoral means to correct the delinquents after the act of preliminary investigation, then the Ordinary has to decide and has to issue a decree choosing any one way of penal procedure (either judicial or administrative) in order to impose or declare a penalty. Here, it is clear that the Ordinary has to decide for a proper penal procedure after all kinds of pastoral approaches, mentioned above, have resulted in vain. A proper penal procedure may not be realised without a proper decree of an Ordinary in accordance with can. 1718, § 1, 3°. A decree of the Ordinary, thus, needs to play a vital role in order to choose a proper penal procedure.

Though the decision of the Ordinary issued in a decree plays a vital role, here in the course of penal process, the Ordinary may not choose arbitrarily[16] any way of penal process to impose or decree a penalty. To determine the

[13] The fraternal correction is defined that: "It is a warning or a caution made by the superior to the one who is in the near future may commit a crime or to whom, is already done the preliminary investigation, is under suspicion that he has committed a delict so that he may watch it in order not to fall in the same crime": Quoted by Astigueta: ASTIGUETA, "L'investigazione previa", in A. D'AURIA - C. PAPALE (eds.), *I delitti riservati alla Congregazione per la Dottrina della Fede,* foot no. 68, p. 104.

[14] The reproof or rebuke is defined that: "It is done by the superior in an authoritative and formal way - must therefore cost the actions (see can. 1339, § 2) – to the one who, with his conduct, gives rise to scandal or serious disturbance in a community": Quoted by Astigueta*: Ibid*., foot no. 68, p. 104.

[15] See can. 1339, § 2.

[16] See PAPALE, *Il processo penale canonico.Commento al codice di diritto canonico , Libro VII, Parte IV,* p. 69.

process forward, for the Ordinary, after the preliminary investigation, is really a great challenge in the context of application of penalty. In order to determine the process forward in the context of inflicting a penalty, the Ordinary has to carefully look into the following considerations:

1. First and foremost, he has to determine whether a penal process is possible, advantageous, necessary and thus can be initiated. Based on the result of the preliminary investigation, if he considers that the penal process may not be useful and it is impossible, then he can determine that the penal process cannot be initiated keeping in mind that he has to avoid useless trials in accordance with can. 1718, § 4.[17]
2. Before making a decree to determine the process forward, he has to consult two judges or other legal experts, if he considers it prudent. Here, Millette states that the Ordinary can even seek the advice of his judicial vicar or other tribunal officials in order to determine the process forward.[18]
3. If the Ordinary identifies that the allegations, found in the preliminary investigations, involve the grave delicts reserved to the Congregation for the Doctrine of the Faith, then the Ordinary cannot determine the process forward due to his incompetency and he has to send all the relevant information directly to the CDF.

Having considered the above mentioned considerations, the Ordinary, if he still believes that he can determine the process forward, then he would have two possible procedures in front of him to choose: *via giudiziale o via amministrativa*. He can either decide to go for the judicial penal process or for the extra-judicial penal process in order to impose or to declare the penalty. In either of these two cases, he has to issue a decree in accordance with can. 1718, § 1, 3°.[19]

2. The Administrative Penal Process

If the Ordinary decides, issuing a decree in accordance with can. 1718, § 1, 3°, to determine the process forward through an extra-judicial decree in order to impose or to declare a penalty, the juridical norms prescribed in can. 1720 are to be observed. Can. 1720 prescribes the norms as follows:

> If the Ordinary believes that the matter should proceed by way of an extra-judicial decree: 1° he is to notify the accused of the allegation and the proofs, and give an opportunity for defence, unless the accused, having been lawfully summoned, has

[17] Can. 1718, § 4; See also D.G. ASTIGUETA, "L'investigazione previa", in A. D'AURIA and C. PAPALE (eds.), *I delitti riservati alla Congregazione per la Dottrina della Fede*, p. 103.

[18] See R. L. MILLETTE, "An analysis of the preliminary investigation in the light of the rights of the accused", *The Jurist* 75 (2015), p. 179.

[19] Can. 1718, §1, 3°.

failed to appear; 2° together with two assessors, he is accurately to weigh all the proofs and arguments; 3° if the offence is certainly proven and the time for criminal proceedings has not elapsed, he is to issue a decree in accordance with cann. 1342-1350, stating at least in summary form the reasons in law and in fact.[20]

2.1 Terminology and Juridical Nature

Before entering into the juridical nature of administrative penal process, it is important to clarify the terminological usage of the code in the context of penal process. In order to indicate the non-judicial penal process, the 1983 code uses the expression "*extra iudicium*" in the following three canons: can. 1342, § 1([...] *poena irrogari vel declarari potest per decretum extra iudicium*); can. 1718, § 1, 3° ([...] *sit procedendum per decretum extra iudicium*)*;* can. 1720 (*Si Ordinarius censuerit per decretum extra iudicium esse procedendum:* [...]). Whereas the same code utilizes another new term: *"proceduram administrativam*" in order to indicate the same sense of non-judicial penal process in can. 1341(*Ordinarius proceduram iudicialem vel administrativam ad poenas irrogandas vel declarandas* [...]). Though the 1983 CIC uses a new terminology: *proceduram administrativam*, the meaning of the term does not make contrary to the former term: *extra iudicium.*

With regard to the meaning and juridical nature of the term: administrative penal process, it could be said that a penal case which is legitimately discussed under the administrative authority of the legitimate superior in order to derive a definitive decision. Though it does not involve judge, promoter of juctice, it does not completely exclude certain legal procedures, like summoning the *investigatus*, giving chance for the defence.[21]

2.2 The Placement of Can. 1720

It is interesting to note that can. 1720 on the administrative penal process is placed as a first canon in chapter II, under the heading "the course of the process" in part IV of the book VII, *De processibus*. It is also to be noted that this can. 1720 is a new canon in the 1983 CIC and we do not find any parallel canon in the 1917 CIC. It is the only canon[22] that speaks on the administrative penal process among those fifteen canons related to penal process. The placement of can. 1720 on the administrative penal process in the Latin code, 1983 CIC, differs from that of Eastern code, 1990 CCEO. In the Latin code, the discipline for the administrative penal process (can. 1720) precedes the

[20] Can. 1720.

[21] In the same sense, see PAPALE, *Il processo penale canonico. Commento al codice di diritto canonico, Libro VII, Parte IV*, pp. 78-79.

[22] In the same sense, see PAPALE, *Il processo penale canonico. Commento al codice di diritto canonico, Libro VII, Parte IV*, p. 79. It is to be remembered that cann: 1341 and 1342 also speak of administrative penal process in the context of application of penalty.

discipline on the judicial penal process (cann. 1721-1731). Whereas, in the Eastern code, the discipline for the judicial penal process (CCEO, cann. 1471-1485) precedes the discipline on the extra-judicial penal process (CCEO, cann. 1486-1487).

2.3 The Competent Authority

To respond to the question, "Who is the competent authority to excersie the administrative penal process?", can. 1720, like in the context of penal preliminary investigation, simply uses the term 'Ordinary'. The Ordinary can make an investigation about an alleged delict, either personally or through some other suitable person in the context of preliminary investigation.[23] Some canonists strongly prefer to go for some other suitable person to conduct the preliminary investigation than the Ordinary himself. There is a possible choice that is given to the Ordinary to appoint some other suitable person for the preliminary investigation. On the contrary, in the context of proper administrative penal process, there is no other choice that is set forth for the Ordinary other than the Ordinary himself.[24] In other words, it is the Ordinary himself to initiate the proper administrative penal process without delegating some other person in his place. As it is already explained above, the term Ordinary is to be understood in accordance with can. 134.

It is made clear that it is only the Ordinary who can initiate the administrative penal process based on the result of the preliminary investigation. Which is the Ordinary who may have the competency of jurisdiction to initiate the administrative penal process? This competency of jurisdiction can be given to the Ordinary under the following two categories: 1. In the forum of domicile or quasi-domicile; 2. In the forum of delict.

In the forum of domicile or quasi-domicile: If the suspect has domicile or quasi-domicile within the jurisdictional boundaries of the Ordinary, the Ordinary (diocesan bishop) of that particular jurisdiction can have the competence to initiate the administrative penal process in accordance with can. 1408.[25] If the suspect does not even have a quasi-domicile and he has a forum in the place of actual residence, then the Ordinary of that particular place of actual residence can have the competence to start the penal process.[26] If the domicile, quasi-domicile, or place of residence is unknown, then the Ordinary of the place of the forum of the plaintiff is able to have competence for the administrative penal process.[27] Finally, in the forum of delict, the Ordinary of the place in

[23] See can. 1717, § 1.
[24] See can. 1720.
[25] Can. 1408.
[26] See can. 1409, § 1.
[27] See can. 1409, § 2.

which the alleged delict occurred can also have the competency for the administrative penal process in accordance with can. 1412.

2.4 The Conditions Required by Law

In the 1983 CIC, there are two possible ways given by the Legislator for the Ordinary to choose any one way of the penal processes in order to inflict or declare a penalty in the context of the application of penalty. The present Code, like 1917 CIC, gives prior importance to the judicial penal process to be used as a penal process in order to impose or declare a penalty. In comparing with an administrative penal process, the judicial penal process offers more guarantee and better protections for the correct administration of justice and gives assurance for the defense of the accused. Based on this aspect, many canonists strongly affirm the judicial penal process as a preferred penal process in the context of applying penalty.[28] However, it cannot be completely ignored the new possibility of inflicting or declaring a penalty by way of an administrative penal process in accordance with can. 1720 legislated in the 1983 CIC. The Legislator of the 1983 CIC, contrary to the ordinary and preferable judicial penal process, has cautiously opened an administrative penal process as a new way of penal process, but as an exceptional one.[29] This exceptional way of penal process is to be operated, in the context of imposing or declaring a penalty, under the following conditions prescribed in law.

a. If the Ordinary believes…(can. 1720)
b. Just reasons against the use of Judicial penal process (can. 1342, § 1)
c. Consulting two judges or legal experts (can. 1718, § 3)

a. If the Ordinary believes…..(can. 1720)

The only can. 1720, which deals with the administrative penal process in the 1983 CIC, uses this conditional phrase 'If the Ordinary believes…', in order to enter into the execution of administrative penal process. The belief on the part of Ordinary could be interpreted as a discernment of the Ordinary. This discernment or the belief of the Ordinary does not arrive simply as soon as he evaluates the indications collected in the preliminary investigation. Whereas, he is to arrive at certain moral discernment concerning the sufficiency of the indications collected in the preliminary investigation and to decide to enter into

[28] F.C. EASTON, "The development of CIC canon 1342, § 1 and its impact upon the use of the extra-judicial penal process", *Studia canonica* 48 (2014), p. 131; In the same sense, see also Z. SUCHECKI, "Il processo penale guidiziario", in Z. SUCHECKI (ed.), *Il Processo penale canonico*, Pontificia Università Lateranense, Mursia 2000, p. 230.

[29] In the same sense see A. D'AURIA, "La procedura per l'irrogazione delle pene" in A. D'AURIA and C. PAPALE (eds.), *I delitti riservati alla Congregazione per la Dottrina della Fede*, p. 140.

It is to be remembered that this extra-judicial method, in the 1983 CIC, is not completely new one in comparing to the 1917 CIC, which also used the extra-judicial way of imposing penalty by way of penal precept.

the administrative penal process if the conditions are available in accordance with can. 1342, § 1. Thus, this conditional phrase indicates, indirectly, the moral discernment of the Ordinary to initiate the administrative penal process.

b. Just reasons against the use of Judicial penal process (can. 1342, § 1)

Among the above said three conditions, in the context of infliction of penalty, this second reason plays a vital role to choose the administrative penal process. The subjective condition (first one), the moral discernment of the Ordinary, is not sufficient to choose an administrative penal process. Can. 1342, § 1 explicitly prescribes another an objective and more important requirement in order to initiate the administrative penal process lawfully and it states: "Whenever there are just reasons against the use of a judicial procedure, a penalty can be imposed or declared by means of an extra-judicial decree; […]".[30]

It is evident that the Legislator has given a new condition in the 1983 CIC in order to initiate the administrative penal process. The conditional phrase, "*Quoties iustae obstent causae ne iudicialis processus fiat…*", which is not found in the parallel can. 1933, § 4/'17, is explicitly given by the Legislator in can. 1342,§1. Here, it is to be noted that there was a change during the revision process from "*grave causes*" to "*just causes*" in the formulation of can. 1342, § 1.[31] The revised code neither defines nor describes the meaning of "just causes". However, in the presence of just causes, the Ordinary can go for the administrative penal process to inflict penalty.

Here, it is to be noted that the presence of the "just causes" plays a vital role in choosing the administrative penal process. Here, in our work, the question: "what are the causes that could be just (iustae) in order to enter into the administrative penal process against the way of ordinary judicial penal process?" , is to be well treated. Commenting on the description of "just causes", Papale, quoting *the relator of the coetus de delictis et poenis*, Pio Ciprotti, writes that the authentic doctrine [32] indicates what is the substance of a "just cause" and he states:

> […] such a cause would exist when the one who is suspected of violating the law in question has not actually denied committing the violation or to have been responsible for doing so. In such a case, the requirements for certitude in a decision have been achieved. Therefore, it would seem superfluous to expend the resources necessary for the judicial process. Also, if the alleged offense had not become public, and was unlikely to become public, it would then be inadvisable to initiate a trial which

[30] Can. 1342, § 1.

[31] See *Communicationes* 9 (1977), p. 161; PAPALE, *Il processo penale canonico. Commento al codice di diritto canonico, Libro VII, Parte IV*, p. 70.

[32] P. CIPROTTI, "Diritto penale canonico", in *Enciclopedia giuridica*, Vol. 11, Istituto della Enciclopedia Italiana Treccani, Roma 1989, p. 13.

> operation could neutralize any effort to avoid harm to the society, the repair of which is one of the three goals for the penal process. Further, conducting a trial could also cause unnecessary damage particularly to the reputation of the person alleged to have perpetrated the action if he really was innocent of the crime.[33]

From the above mentioned version, the substance of "just cause" can be referred to three occasions: (1) If the alleged person has not actually denied the violation of law or precept. (2) If the alleged offense has not become public and is unlikely to become public. (3) If there is no personal competent on the part of the alleged person.

In the application of "*iustae causae*" in each and every particular case, the Ordinary may not try to find any situation as an "*iusta causa*" in order to enter into the administrative penal process. While commenting on the aspect of "*iustae causae*", some canonists have affirmed that the '*iustae causae'* are to be aimed at causes that really oppose to the celebration of the judicial penal process and not like causes that recommend the administrative penal process.[34] In other words, the just causes that permit the following of the extra-judicial or administrative route have to be really opposed to the judicial route and they cannot simply be reasons that argue for following the administrative route. Thus, the concept of "*iusta causa*" is interpreted in terms of rendering real difficulty to execute the regular way of judicial penal process. In contrast to this idea, some other canonists have interpreted it differently. They maintain that those just causes, which are opposed to the judicial way, do not identify in all those motives that would recommend the administrative penal process. Therefore, all that would suggest the utility of the administrative penal process are not necessarily understood as those causes that oppose to the judicial penal process. The causes which oppose the judicial penal process are not equivalent to the causes that prefer the administrative penal process.[35]

c. Consulting two Judges or Legal Experts (can. 1718, § 3)

In the context of choosing the administrative penal process to inflict penalty, the 1983 CIC, unlike the 1917 CIC,[36] speaks of another condition required by law, on the part of the Ordinary. Before making a decree indicating the choice of administrative penal process, the Ordinary is to observe the norms in accordance with can. 1718, § 3 that states: "In making the decrees referred to

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[33] PAPALE, *Il processo penale canonico. Commento al codice di diritto canonico , Libro VII, Parte IV,* p. 72; A. D'AURIA, "La procedura per l'irrogazione delle pene" in A. D'AURIA and C. PAPALE (eds.), *I delitti riservati alla Congregazione per la Dottrina della Fede,* pp. 139 and 143;

[34] See PAPALE, *Il processo penale canonico. Commento al codice di diritto canonico , Libro VII, Parte IV,* p. 71.

[35] D'AURIA, "La procedura per l'irrogazione delle pene" in A. D'AURIA - C. PAPALE (eds.), *I delitti riservati alla Congregazione per la Dottrina della Fede,* p. 138.

[36] In the 1917 CIC, there is no parallel canon to can. 1718, § 3.

in §§ 1 and 2, the Ordinary, if he considers it prudent, is to consult two judges or other legal experts".

Here, this condition of consulting two judges or other legal experts is left to the prudent act of the Ordinary. Since the canon itself speaks of prudential norm of the Ordinary, D'Auria writes that this obligation of consultation may not require on the penalty of nullity (*sub poena nullitatis*) and here it presents a facultative formula. It is interesting to note that he continues to commend that the usage of the phrase, "*si prudenter censeat",* does not call upon the norms prescribed in can. 127, § 2.[37] However, he commends that the alleged person could make an administrative recourse whenever it may result that the Superior (Ordinary) has not respected the norms of can. 1718, § 3. In other words, this prudential norm, on the part of Ordinary, in the context of choosing the administrative penal process, is better to be observed prudently in order to avoid injury to the alleged person.

Among the three conditions discussed above, each one is not individually required for the lawfulness of choosing the administrative penal process. All the three conditions are interrelated to each other in the sense that one leads to another dependently. In fact, it is the second reason – just reasons against the use of judicial penal process - plays a vital and primary role, legally, in order to choose the administrative penal process. Once the Ordinary finds the availability of just reasons (can. 1342, § 1) (the objective condition) to go for the administrative penal process, then he should have certain belief (can. 1720) or moral discernment (the subjective condition) to which he may arrive at, with the prudential norm of consulting two judges or legal experts (can. 1718, § 3). If the availability of just reasons against the use of the judicial penal process is missing, then the Ordinary may not have a moral discernment independently and there is no need of consulting two legal experts, as a prudential norm, to enter into the choice of an administrative penal process. Thus, it is evident that all the three conditions discussed above are dependent to each other.

3. The Proper Administrative Penal Process

The proper administrative penal process, legislated in can. 1720, is placed, in the 1983 CIC, along with the canons of judicial penal process. While eight canons (cann. 1721-1728) are dedicated for the judicial penal process, it is to know that there is only one canon (can. 1720) which is particularly dedicated for the proper administrative penal process under the development of the process. As per the norms of can. 1720, in the administrative penal process, the following procedural steps are to be observed:

1. The formal notification to the accused (can. 1720, 1º)

[37] A. D'AURIA, "La procedura per l'irrogazione delle pene" in A. D'AURIA - C. PAPALE (eds.), *I delitti riservati alla Congregazione per la Dottrina della Fede,* p. 150.

2. The right of defense of the accused (can. 1720, 1º)
3. The act of weighing the proofs with two assessors (can. 1720, 2º)
4. The decree of inflicting penalty (can. 1720, 3º)

3.1 The Formal Notification to the Accused

In accordance with the norms of can. 1720, 1º, the Ordinary has to notifiy the accused about the allegation and the proofs in the administrative penal process. To give a formal notification to the accused, on the part of the Ordinary, is a first and an obligatory procedural step in the administrative penal process. It is an obligatory one by law[38] and it means that any penal process (either judicial or an administrative one) should brought the other party to the process in order to make known about the allegation and give ample opportunity for the right of defence. The formal notification to the accused is to be sent by the competent Ordinary through the means of a decree and it contains the following information:[39] (a) Convoking the accused to present himself (or herself) for the penal procedure and informing that a administrative penal procedure is set up due to the precise accusation and thus indicating the contradicted delict. (b) It has to be accompanied by the proofs collected.

Here, it is to be noted that the notification to the accused, as per the norms of can. 1720, 1°, is to be lawfully communicated (*rite vocatus*) in the sense that it is to be communicated by means of the public postal service,or by some other particularly secure means. It is also a precise obligation on the part of the Ordinary to verify that the notification to the accused is reached effectively. Otherwise, the unlawful communication to the accused will result in null and void of the procedural acts in accordance with the can. 1511.

Commenting on the notification to the accused along with the accusation and the proofs, De Paolis has affirmed the importance and the legal implication of the notification and communication of the proofs to the accused stating:

> The proofs, which are not communicated to the accused, cannot persuade or induce the superior to inflict a penalty and they cannot enter into the valuation of his judgement. In the case, infact, if the superior may weigh his judgement of the proofs not communicated, hence, he violates the right of defense. [40]

It is, thus, clear that if the act of notification is not done in the administrative penal process, it will lead to the violation of the right of defense on the part of the Ordinary and hence there is no possibility of inflicting a penalty in a just way.

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[38] See M. MOSCONI, "L'indagine previa e l'applicazione della pena in via amministrativa", in GRUPPO ITALIANO DOCENTI DI DIRITTO CANONICO (eds), *I giudizi nella Chiesa: processi e procedure speciali*, p. 217.

[39] *Ibid*., p. 217.

[40] DE PAOLIS, "Lo svolgimento del processo (cann. 1720-1728)", in Z. SUCHECKI (ed.), *Il processo penale canonico*, p. 202.

3.2 The Right of Defense of the Accused

All Christ's faithful have certain obligations and rights, in the Church**,** according to the legal system of the Church. In accordance with the norms of can. 221, § 1: "Christ's faithful may lawfully vindicate and defend the rights they enjoy in the Church before the competent ecclesiastical forum in accordance with the law".

Among the number of rights, the right to defense in the case of penal process is the fundamental and natural right.[41] The right to defense in any juridical system is one of the pivots (central point) of the penal trial, and this is also true in the juridical system of the Church, both when it proceeds along the judicial route and when it adopts the extra-judicial route.

In comparison with the ordinary judicial penal process, canonists would argue that the possibility of right to defence is given very less in the extra-judicial route. In other words, the right of defense to the accused is more guaranteed in the judicial penal process rather than that of in the administrative penal process. However, we cannot deny the fact that the Legislator has given the possibility of the right of defense to the accused party also in the administrative penal process according to the norms of can. 1720, 1°This canon explicitly affirms the obligation of the Ordinary to guarantee the possibility of the right of defense to the accused. Giving a greater possibility of the right of defense to the accused is one of the obligatory procedural steps in a penal case even though the delict and imputability are evident and the possibility to defend himself must be given to him. No body can be condemned or suffer penalties without the possibility of defending himself / herself. Here, it is to be underlined that the Ordinary cannot go forward to issue a decree of penalty without giving a possibility of defense to the accused, though the delict and imputabiltiy are evident based on the indications collected in the penal preliminary investigation. For, the canonical penal process (either the judicial route or an extra-judicial route), that has issued a final decision (either by means of a judgment or a decree) without giving the possibility of defense to the accused, must be declared null with an irremedialble nullity in accordance with the norms of can. 1620, 7°.

Exercising the act of defense in reality involves certain practical problems. Can. 1720, 1° does speak of giving the possibility of the right of defense to the accused, but it hardly speaks of the mode or form of giving the right of defense. In case, if the accused accepts to cooperate and comes for the act of defense, he appears for the first time in the administrative penal process. Here, it is to be noted that he may not be aware of an exact accusation and the related proofs of the delict before the event of formal notification due to the reason that he is not an active subject, but a passive one, in the preliminary

[41] See PAPALE, *Il processo penale canonico. Commento al codice di diritto canonico, Libro VII, Parte IV,* p. 81.

investigation. Hence, it is quite reasonable that he is in need of reasonable time to prepare himself to present his act of defense which is his fundamental right.

Thus, giving an opportunity of defense to the accused also involes a reasonable time to prepare adequately for the accused. Another apparent difficulty, as per the norms of can. 1720, 1°, is that this canon does not refer to any explicit possibility of having an advocate on the part of accused to present the defense as in the case of penal judicial trial. However, it is to be remembered that the canon on administrative penal process (can. 1720) does not exclude the possibility of having an advocate personally, on the part of accused, like a legal consultant to present the defense appropriately.

When the accused is duly and legitimately cited with all the proofs collected, but, if he refuses to cooperate, to appear or otherwise fails to respond, he should be declared absent for the administrative penal process by means of a decree. In this regard, his right to appear later in proceedings remains intact, and he should continue to be notified concerning the formal acts of the process and afforded the opportunity to present a defense.

In the administrative penal process, the motive or purpose of formal notification and communication of proofs to the accused is nothing but to give the possibility of defense to him. Likewise, the purpose of giving an opportunity to the accused is obvious to trace out the real existence of a delict. The truth or the real existence of the delict cannot be reached out from the one side arguments of the case. The two sides of the arguments, from both the accuser and the accused in penal cases, are very much necessary to arrive at the truth. As the author, De Paolis, has rightly pointed out: "Also, in the administrative penal process, the truth is to be emerged from the confrontation, between the accusation and the defense, though it does not treat a true judicial process".[42]

In order to trace out the real existence of a delict, a confrontation towards the accusation serves well by the obligatory means of the possibility of the defense to the accused and thus, the act of confrontation fulfills two purposes of both tracing out the true existence of a delict and giving the possibility of the right of defense to the accused.

3.3 The Act of Weighing the Proofs with Two Assessors

After giving the possibility of defense to the accused and before issuing a penal decree in the administrative penal process, the Oridnary is to follow the third procedural step of weighing the proofs carefully in accordance with the norms of can. 1720, 2º. Here, accurately, the Ordinary is to ponder over the proofs and all the arguments together with two assessors. For, here, in the context of administrative penal process, the Ordinary acts as a judge in order to impose or declare a penalty by means of a decree. It is to be noted that weighing

[42] DE PAOLIS, "Lo svolgimento del processo (cann. 1720-1728)", in Z. SUCHECKI (ed.), *Il processo penale canonico*, p. 202.

the proofs and arguments together with two assessors, unlike the norms of can. 1718, § 3 in the context of preliminary investigation, is an obligatory one on the part of the Ordinary due to the reason that this act of weighing will decide upon the appropriate penalty. If the Ordinary does not seek the assessment of two assessors, the penal decree issued by the same Ordinary would become invalid in accordance with the norms of can. 127, § 1 that states: "For the validity of the act, it is required that the consent be obtained of an absolute majority of those present, or that the advice of all be sought".

Here, in the context of administrative penal process, the juridical act of issuing a penal decree does not require the consent but rather the advice or opinion of those two assessors mentioned in can. 1720, 2°. Even though it is an advice of those two assessors, it is an obligatory one, on the part of the Ordinary, and if it is not sought by the Ordinary to weigh the proofs and the arguments, then the following juridical act of issuing the penal decree will be invalid in accordance with the norms of can.127, § 2, 2° that states:

> § 2 When the law prescribes that, in order to perform a juridical act, a Superior requires the consent or advice of certain persons as individuals: 2° if advice is required, the Superior's act is invalid if the Superior does not hear those persons. The Superior is not in any way bound to accept their vote, even if it is unanimous; nevertheless, without what is, in his or her judgement, an overriding reason, the Superior is not to act against their vote, especially if it is a unanimous one. [43]

Thus, it is clear that the act of weighing the proofs together with two assessors is an obligatory act, on the part of the Ordinary, in order to perform a valid juridical act in the context of administrative penal process. The provision of hearing the assessment of two assessors is a great assistance given by the Legislator to the Ordinary who acts as a sole judge in the administrtative penal process.

The two assessors, who are mentioned in can. 1720, are to be appointed by the appropriate decree by the Ordinary. There is no requirement in can. 1720, 2° that the assessors are must be priests. They can be clerics or lay persons, men or women and it is important that they must respect the secret of the office and the other required qualifications, in general, for this office are honest and the pastoral sense to be considered the competence in the involved ambit of the delict in examination. Here, it is to be noted that the Ordinary and these two assessors are not called to express a true or proper collegial judgment, but the responsibility of giving a proper judgment in the administrative penal process falls only on the Ordinary and the assessors do not sign in the final decree.[44] The principal purpose of weighing the proofs and the aruguments together with

[43] Can. 127, § 2, 2°.

[44] See K. GILLESPIE, "The special faculties granted to the congregation for the clergy. For the salvation of souls and the good order of the ecclesiastical community. Context, purpose, and use", *Studia canonica* 48 (2014), p. 319.

two assessors is nothing but to examine whether the alleged delict is certainly proven. It means that the Ordinary, along with two assessors, has to examine the real existence of imputability and the time for criminal proceedings has not elapsed in accordance with the norms of can. 1720, 3°.

3.4 The Decree of Inflicting a Penalty

Following the above discussed the three procedural steps, the Ordinary is to observe the fourth and final procedural step of issuing an appropriate penal decree in accordance with the norms of can. 1720, 3° that states: "If the offence is certainly proven and the time for criminal proceedings has not elapsed, he is to issue a decree in accordance with cann. 1342-1350, stating at least in summary form the reasons in law and in fact".

As per the norms of canon mentioned above, for the Ordinary to emanate a penal decree in the administrative penal process, there must exist two conditions: (a) if the alleged delict is certainly proven (*Si de delicto certo constet*) and (b) the criminal action is not elapsed (*neque actio criminalis sit extincta*).

The first condition of certainly proven of the alleged delict is to be understood in accordance with the norms of law. Certanity, here, refers to the real existence of a delict, which is to be understood in accordance with the norms of can. 1321. This real existence of a delict consists in three constitive elements of an objective external violation of a law or precept, a subjective grave moral imputability, and a legal sanction against said action. The Ordinary, in the administrative penal process, has to verify these three constitive elements in order to prove the real existence of a delict and thus arrives at required moral certitude to issue a final decree of penalty. Besides these three constitive elements, Papale recommends a new element of verifing the factors exempting from a penalty in accordance with the norms of can. 1323 before issuing a penal decree.[45]

The second condition, as per canon (can. 1720, 3º) in examination, of extinguishing the time for criminal action by prescription[46] is also to be verified by the Ordianry before issuing the decree. As per the norms of can. 1362, a period of three years is required, in general, for a criminal action to be extinguished by prescription. This prescription runs from the day when the offence was committed and if the offence was enduring or habitual, the prescription runs from the day it ceased. For the offences reserved to the Congregaion for the Doctrine of Faith, different period of prescription is given. This same canon gives a different period of five years of prescription for the

[45] PAPALE, *Il processo penale canonico. Commento al codice di diritto canonico, Libro VII, Parte IV,* pp. 84-85.

[46] Prescripiton, in canon law, is defined in can. 197.

action arising from any of the offences mentioned in cann. 1394, 1395, 1397, and 1398.

Having verified the above mentioned two conditions, the Ordinary is to emanate an approiate penal decree, either of condemnation or of absolution, observing the norms prescribed in cann. 1342-1350. The decree, which is presecribed in the canon in examination (can. 1720, 3º) in the context of administratve penal process, is neither a judicial sentence[47] as in the case of judicial penal trial nor a precept, but, in nature, a singular decree[48] that gives a decision in order to impose or declare a penalty. This penal decree is to express atleast in summary form the reasons for the decree, clarifying what are the fundamentals in law, the objective presuppositions of the delict, the reasons for the act, and also the objective end and the secondary motives that induce the administration to act.

Finally, it is to be underlined that once the final decree is emanated by the Ordinary, it has to be notified to the accussed. In fact, the canon on administrative penal process (can. 1720) maintains silence in the matter of notification of the final decree. However, can. 1363, §§ 1 and 2 indicates that the final decree, emanated by the Ordinary in the administrative penal process, is to be notified to the accused within the periods mentioned in can. 1362.[49] If it is not done, an action to execute a penalty is extinguished by prescription. It is also to be noted that there is an ample possibility of recoursing against this decree in accordance with the norms of cann. 1732 – 1739 and the recourse against this administrative decree has a suspensive effect in accordance with can. 1353.

4. The Penalties to be imposed through the Administrative Penal Process

As per the norms of can. 1720, 3°, the Ordinary is to issue a penal decree, in the administrative penal process, in accordance with the norms of cann. 1342-1350. These canons examine certain criterions on the application of penalties. Though these canons are placed in book VI under the title, Sanctions in the Church, they are included by the Legislator himself in the procedural norms to be observed in the penal procdures. Among them, can. 1342, in general, deals with the difference between the judicial procedure and administrative procedure, when and how to use the extra-judicial procedure in the context of application of penalty. The third paragraph of this can. 1342 prescribes that a Superior, who imposes or declares a penalty by an extra-judicial decree, is to observe all the norms that are said to a judge in regard to the imposition or declaration of a penalty in a trial. The rest of the canons (cann. 1343-1350) in

[47] A judgment given in a penal trial: See can. 1731.
[48] It is the singular administrative decree, which imposes or declares a penalty.
[49] It speaks about the different periods of prescription for different offences.

examination, except can. 1350[50], speak about certain criterions, for the judge and the superior, to be used in the penal process (in the administrative penal process) in the context of application of penalties.

The canonical analysis, on the canons for the application of penalties especially on cann. 1343-1350, reveal clearly, for a judge and a superior who impose or declare a penalty, two important elements namely: (a) certain possible criterions, and (b) the provisions given to the discretionary power of a judge and a superior. It is to be noted that these two elements, "possible criterions and the discretionary power of a judge and superior" express explicitly the pastoral spirit of the Church, towards the delinquents, in the context of application of penalty even in the administrative penal process. These possible criterions and the discretionary power, indicating the pastoral spirit of the Church, are given explicitly to the Ordinary (in our context of administrative penal process) by the Legislator in the order of the canonical doctrine. These criterions, in the context of application of penalties, are said to be in terms of (1) The facultative penalty (can. 1343), (2) An obligatory penalty (can. 1344), (3) the penalty of censure (1347), (4) An indeterminate penalty (can. 1349) and (5) the quasi penal faculty (can. 1348).

5. The Pastoral Provisions Given to the Discretionary Power of the Ordinary

In the administrative penal process, besides certain possible criterions of penalties, the Legilator has also established certain pastoral provisions left to the discretionary power of the Ordinary, in the context of application of penalty. Those pastoral provisions are given in terms of (1) Deferring penalty to an opportune time (can. 1344, 1°); (2) Abstaining or substituting the penalty (can. 1344, 2°); (3) Suspending the obligation of expiatory penalty (can. 1344, 3°); (4) Refraining from imposing the penalty (can. 1345); (5) The equitable penalty in the cases of multiple offences (can. 1346). The first three provisions are attributed to the prceptive penalties while the provision of refraining from imposing any penalty is attributed to the situation of imperfect use of reason on the part of delinquent.

6. The Limitations of the Ordinary in Using the Administrative Penal Process

As it is already discussed above, the Ordinary, while emanating a penal decree in the context of administrative penal process, is to observe the legal norms prescribed in cann. 1342-1350. Though these canons provide, for the

[50] This canon speaks about Ordinary's pastoral care towards the penalised clerics.

Ordinary to impose or declare a penalty through the means of administrative penal process, ample criterions, like facultative, obligatory, and indeterminative penalties along with the pastoral provisions that are just discussed above, the Legislator has also legislated certain limitations for the Ordinary who cannot impose or declare certain pernalties like perpetual penalties, using an extra-judicial decree, in accordance with can. 1342, § 2 that states: "Perpetual penalties cannot be imposed or declared by means of a decree; nor can penalties which the law or precept establishing them forbids to be applied by decree.

As per the norms of canon mentioned above, the Ordinary cannot legitimately impose or declare a penalty by means of a decree in the following cases:

1. In the cases of perpetual penalties
2. When the law or precept forbids penalties to be applied by decree.
3. Besides, in the cases of Grave Delicts reserved to the CDF.

6.1 In the Cases of Perpetual Penalties

Perpetual penalties, according to Mosconi, are those penal sanctions that bind the accused in the way not temporary; it means that not limiting to a certain period of time, whether established in progress or indefinitely. Perpetual penalty is, therefore, of its nature extends all the time that follows its infliction, even if it evidently does not exclude the possibility of acts that put an end to the penalty itself. Based on this meaning, perpetual penalties can be of expiatory penalties which affect the offender either forever or for a determinied or an indetermined period according to can. 1336, § 1 and not the medicial penalties (cann. 1331-1333) which are removed with the amendment of the accused.[51] It is to be noted that all the expiatory penalties, mentioned in can. 1336, § 1, are not perpetual in nature[52]and among them no. 5 on dismissal from the clerical state is surely a perpetual penalty, the perpetual inability to take up the ecclesiastical office and the deprivation of an ecclesiastical office which is within the control of the Superior who establishes the penalty in accordance with can. 1338, § 1.

The above mentioned perpetual penalties, due to their perpetuity and gravity in nature, cannot be imposed or declared by the Ordinary by means of administrative penal process. In other words, due to their perpetuity and gravity in nature, the perpetual penalties need to have more guarantee of self-defence and major guarantee of justice which are quiet possible more in the judicial penal process. Commenting on the imposition or declaration of perpetual penalties, Thomas J. Green remarks:

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[51] See DE PAOLIS, "L'applicazione della pena canonica", *Moniter ecclesiasticus* 114 (1989), p. 92.

[52] Woestman comments: "Some are perpetual, some are for determined period and some are for indetermined period of time till the superior pardons": WOESTMAN, *Ecclesiastical sanctions and the penal process. A commentary on the code of canon law*, p. 55.

> Perpetual penalties can be imposed only through formal judicial procedure. There is a proportion between the seriousness of the penalty and the seriousness of the procedure imposing it. When the consequences of a penalty are so weighty, the accused should enjoy maximal legal protection, e.g., services of an advocate, access to all relevant documentation for self-defense purposes, possible appeal of an adverse decision to a higher court.[53]

Thus, in the context of imposing or declaring the perpetual penalties, due to their gravity and perpetuity, the accused must have certain legal protection like the services of an advocate and the possibility of self-defence. Hence, fortunately, the Legislator himself has given a limitation to the Ordinary not to use an extra-judicial decree while imposing the perpetual penalties in accordance with can. 1342, § 2.

6.2 When the law or precept forbids penalties to be applied by decree

Besides the norm of limitation on the application of perpetual penalty, the Ordinary, in the context of administrative penal process, is limited by another norm in the case of when the law or precept forbids the penalties to be applied by a decree in accordance with the same canon in examination. For example, penal cases concerning the penalty of dismissal from the clerical state and concerning the imposition or declaration of an excommunication, in accordance with can. 1425, § 1, 2°, are reserved to a collegiate tribunal of three judges.

It is crystal clear that the imposion of the perpetual penalty of dismissal from the clerical state cannot be carried out by way of decree in the administrative penal process, but by way of judicial trial. Likewise, the law, which is prescribed in the same canon mentioned above (can. 1425, § 1, 2°), prohibits the penalty of imposing or declaring an excommunication by way of decree, but way of collegiate tribunal of three tribunals.

It is to be noted that this norm of prohibition is given only to the administrative penal process, while permitting for the judicial penal route, in view of more guaranting the right of defence on the part of offender and more guaranting the truth and justice especially in the cases of imposing a perpetual and grave penalties. For, the effect of grave penalties will also be grave in nature.

6.3 In the Cases of More Grave Delicts Reserved to the CDF

While dealing with the limitations of the Ordinary in utilizing the administrative penal process in the context of application of penalty, it is an

[53] J.P. BEAL - J.A. CORIDEN - T.J. GREEN (eds.), New *Commentary on the Code of Canon Law*, New York 2000, pp. 1559-1560.

obvious obligation, in the penal canonical doctrine of the Church, to examin about the special norms in the cases of grave delicts reserved to the Congregation for the Doctrine of the Faith legislated for the Universal Church in the *Normae* 2010. According to the norm of art. 16 of the *Normae* 2010:

> Whenever the Ordinary or Hierarch receives a report of a more grave delict, which has at least the semblance of truth, once the preliminary investigation has been completed , 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, with due regard, however, for the right to appeal, if the case warrents, against a sentence of the first instance only to the Supreme Tribunal of this same Congregation.[54]

As per the norm of above mentioned article, the Ordinary or Hierarch is restricted to impose or declare a penalty, after the preliminary investigation, in the cases of more grave delicts reserved to the Congregation for the Doctrine of the Faith, unless the congregation itself gives certain directions to go further. In addition to this norm, art. 21, on procedural norm, explicitly expresses that:

> §1. The more grave delicts reserved to the Congregation for the Doctrine of the Faith are to be tried in a judicial process; § 2. However, the Congregation for the Doctrine of the Faith may: 1° decide, in individual cases, ex officio or when requested by the Ordinary or Hierarch, to proceed by extra-judicial decree, as provided in can. 1720 of the Code of Canon Law and can. 1486 of the Code of Canons of the Eastern Churches. However, perpetual expiatory penalties may only be imposed by mandate of the Congregation for the Doctrine of the Faith; 2º present the most grave cases to the decision of the Roman Pontiff with regard to dismissal from the clerical state or deposition, together with dispensation from the law of celibacy, when it is manifestly evident that the delict was committed and after having given the guilty party the possibility of defending himself.[55]

Thus, it is clear that the Ordinary is highly restricted to impose or declare a penalty in the cases of more grave delicts reserved to the Congregation for the Doctrine of the Faith, while operating the administrative penal process in the context of application of penalty, unless a special mandate of the same congregation permits him to act.

7. The Differences of the Administrative Penal Process

At the point of concluding the discussions and the arguments on the concern theme of the administrative penal process legislated in can. 1720, it is obviously required to articulate ceratin differences of this administrative penal

[54] CONGREGATION FOR THE DOCTRINE OF FAITH, *Normae de gravioribus delictis* (21 May 2010), in *AAS* 102 (2010) 7, art. 16, p. 426.

[55] *Ibid*., art. 21: §1.

process in respect to the judicial penal process. Those differences could be enumerated as follows:

1. After the preliminary investigation, when the decree of decision on further action of going forward to a penal process is given by the Ordinary, it is the promoter of justice who, in fact, presents a petition of accusation in the judicial penal process.[56] On the contrary, in the administrative penal process, the petition of accusation is assumed by the Ordinary himself and he, at once, initiate to notify the accused.[57] In other words, there is no role, as such, for the promoter of justice here in the administrative penal process.

2. It is the judge who acts and conducts the penal case along with an advocate in the judicial penal process.[58] Whereas, it is the Ordinary, who conducts the penal case and weighs all the proofs along with two assessors.[59]

3. In the judicial penal process, the judge who judges a case and the promoter of justice who acts as a public accuser or a plaintiff, are the two different persons and in other words, the judge, here, is a *super partes* (above the parties). On the contrary, the Ordinary, in the administrative penal process, is the one who acts as *dominus* and he, at the same time, performs as the public accuser and as a judge who emanates a final decree of the penalty. If the Ordinary himself is the same person of both public accuser and a judge with regard to a penal case and all the more he knows all about the offender, as a Superior and hence, there is a greater possibility of arising the question of prejudice and partiality on the part of the Ordinary and there emerges also the lack of guarantee on the truthful pronouncement in the final decree.[60]

4. The right of self-defence is more guaranteed, on the part of the accused, in the judicial penal process due to the reason that he has the right to engage an advocate either by himself or is appointed by the judge himself.[61] Besides, the accused person always has the right to speak last.[62] On the contrary, it is less guaranteed, on the part of the accused, in the administrative penal process, though there is an opportunity given to him by the Ordinary in the level of recourse in accordance with can. 1738 [63] and there is no explicit legislation to have an advocate in this administrative penal process.[64]

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[56] See can. 1721, § 1.

[57] See can. 1720, 1°.

[58] See can. 1723, § 2.

[59] See can. 1720, 2°.

[60] Many authors have highly remarked this point of view in the administrative penal process: See DE PAOLIS, "Lo svolgimento del processo (cann. 1720-1728)", in Z. SUCHECKI (ed.), *Il processo penale canonico*, p. 200; See also MOSCONI, "L'indagine previa e l'applicazione della pena in via amministrativa", in GRUPPO ITALIANO DOCENTI DI DIRITTO CANONICO (eds), *I giudizi nella Chiesa. Processi e procedure speciali*, p. 226; PAPALE, *Il processo penale canonico. Commento al codice di diritto canonico, Libro VII, Parte IV*, p. 80.

[61] See can. 1723, § 1.

[62] See can. 1725.

[63] See can. 1738.

[64] See can. 1720, 1°.

5. The judgement, in the judicial penal process, is pronounced in the form of a sentence. Whereas, the final descion of the Ordinary, in the administrative penal process, emenates as a decree.

Conclusion

Finally, it could be observed that can. 1720 is the only one and new canon on the procedural norms of administrative penal process legislated in the 1983 CIC. Though less guarantee is given for the right of self-defense on the part of the accused, we cannot ignore the fact of opportunity of self-defense given to the accused party here in the administrative penal process. The entire administrative procedural norms are mainly focused on the role of the Ordinary as *dominus*. Here, the Ordinary plays a vital and prime role in the administrative penal process and he is obliged to observe the canonical norms prescribed in cann. 1342-1350, in the context of the application of penalty.