

A Practical Guide for the Visitor (Rome 2005)

Canonical Process of Expulsion: Brief Canonical Procedure, Long Procedure, *Ipsa Facto*; Dismissal from the Congregation (n. 165-190)

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Premises

The theme of this gathering is rather complex and one that is most complicated, and, just as other aspects of it are complex, so too is the part of Canon Law that applies to the processes and codes. It is not my intention to, nor can I go into great detail here. I limit myself to some principal points, indicating a few premises for consideration.

a) The beginning of the Canonical procedure of expulsion presupposes that beforehand all possible solutions to the problem have been exhausted, that all other avenues have been trod, that the confrere in difficulty has been offered fraternal, opportune help as prescribed by article 14 § 2 of the Statutes, convinced that the greatest good of the Congregation is the confreres (*A Practical Guide for the Visitor*, art. 8). The expulsion of a member of the Congregation, in fact, should constitute an extreme situation.

b) Whoever is entrusted with the authority to carry out this service should have a good knowledge of the universal Code of Canon Law, as well as the particular law governing the Congregation. However, even though familiar with the law, one should not presume to know everything. In some cases it is necessary to obtain the help of experts and to seek guidance from the General Curia, especially before beginning such procedures as expressly stated in the *Guide*. In fact, it is necessary not only to understand the abstract norm but also to be apprised of the practice followed by the Dicasteries of the Apostolic See.

c) Even in cases where things seem obvious and simple, it is necessary to follow the procedures of universal law in a precise manner, as well as the particular law, so as not to incur irregularities that may have repercussions as to the validity of the procedures in question. You must be attentive to write and gather the necessary documentation with recourse to witnesses when required.

Canonical Process of Expulsion

With this in mind, then, let us now proceed to various points in reference to the process of Canonical Expulsion of a confrere of the Congregation.

1. The General principle formulated in article 68 of the Constitutions defers to Universal Law. In fact, the articles found in the Constitutions are an application of what it says in Universal Law.

The casuistry is simple when it deals with members who are admitted members (*Guide*, nn. 166-167).

- Admitted members are free to leave the Congregation by manifesting the desire to do so to their Superiors.
- The Superior General or Visitor can expulse admitted members for a just cause, after having heard his council and the applicable directors of formation.
- No norm, neither universal nor particular, obliges that reasons for expulsion be communicated; however, to do so is reasonable and respectful of the person, although there may be reasons not to do so.

The casuistry is more complicated when it comes to incorporated members (*Guide*, nn. 168-181). The *Guide* clearly distinguishes diverse situations and methods.

2. “Ipso facto” Expulsion (*Guide*, nn. 169-171). The Major Superior does not expulse a confrere, instead he declares that he has expulsed himself by an action that he has incurred, in one of two situations (cases) foreseen by canon 694, § 2. In practice, it is said that the expulsion occurred the moment the act was committed.

The situations (cases) foreseen are both obligatory:

- Notorious apostasy of the Catholic Faith. The concept of apostasy refers to heresies and schisms, notoriety can be of law (after a judicial sentence or by confession of the subject himself) or by act (if the action is publicly known and it is not possible to conceal or excuse).
- Matrimony contracted or the intent to contract marriage, even if only civil: this norm includes effectively having contracted a valid marriage as well as the intent to contract matrimony, even though the objective was not achieved because of some obstacle.

In these cases, once proof has been gathered (certificates, declarations, testimonies) the Major Superior should issue, without any delay, a declaration of the fact so that the expulsion would be juridically adequate.

3. Obligatory expulsion “ab homine” by brief procedure (*Guide*, nn. 172-177). When a confrere is encountered who has committed specific offenses that are expressly stated in canon 695 § 1.

Expulsion is obligatory, except when it is accomplished as seen in the same canon 695, § 1 for offenses that are referred to in canon 1395 § 2.

The norm in canon 695 refers to specific acts that have well-defined characteristics. It is necessary, as such, to refer to the cited canons: 1397 (homicide, kidnapping, or violent or fraudulent detention, mutilation or grave injury); 1398 (abortion); 1395 (concupinage or other grave acts against the 6th Commandment of the Decalogue).

The procedures require that:

- The Major Superior gathers evidence of the acts and their imputability.
- The accused can defend himself.
- The signed documents by the Major Superior and notary and the responses given to the accusations, signed by the confrere, are transferred to the Superior General.
- The Superior General weighs the evidence and collegially together with his council, in a secret vote, redacts a decree expounding the motives of law and the facts.
- The decree must be communicated to the accused so that, if he desires, he can appeal within the ten-day time limit.

It must be specified that recourse has a suspending effect and, for the time being, it is necessary to await a response from the authority to which the recourse has been sent and, in all cases, await the confirmation from the Apostolic See, which also must transmit a decree with specified response (minutes).

The *Guide* makes two precise observations:

- Article 175 recalls what I highlighted in the Premises, regarding the need to use pastoral care and prudence before beginning this process.
- Article 177 advises that although the procedures of the process are clear in theory, difficulties may arise due to the specific acts or the interpretation of the law.

4. Non-obligatory expulsion “ab homine” with longer process (*Guide*, nn. 178-181). According to the mandate in canon 696 § 1, it must be observed:

- Expulsion is not obligatory — the law offers the possibility of a “quasi” process that can be followed, but is not required;

- The causes should be grave, external, public, imputable, and juridically proven; such characteristics should exist together and simultaneously and not in isolation from one another;
- The link of the causes is definitive (as treated by universal law) and exemplary — similarly the particular law may determine other grave causes.

The *Guide* describes in detail and with great precision the stages that must be covered in the case that the Major Superior decides to undertake the means to expulse the confrere. Although some elements have already been indicated, it is recommended to pay close attention to the instructions in the *Guide* in number 181.

5. The *Guide* then speaks of the immediate expulsion from the house without process (*Guide*, nn. 182-187), in accordance with article 74 § 3 of the Constitutions that repeats canon 703 which states “In the case of serious exterior scandal or very grave imminent harm to the institute...”

- two diverse cases are referred to and each one of them is sufficient for expulsion. The weight is even greater, if it can be determined that both exist.
- The nature of immediate expulsion from the house is especially grave. It is not sufficient to act based on suppositions, hypothesis, calculated probability; the terms in canon 703 are precise.
- Once immediate expulsion is determined — the process of expulsion should be followed immediately as prescribed in canons 697-698.

6. Finally, the *Guide* talks about the **effects of expulsion** (*Guide*, nn. 188-190). It is important to read attentively the instructions offered in the *Guide*.

Conclusion

It is worth highlighting, as is often referred to in the *Guide*, that extreme prudence, precaution, and precision is to be used in these cases, never forgetting to follow the prescribed steps and carefully document everything step by step.

However, prudence is not the equivalent of doing nothing or infinite waiting. Respect for the person of the confrere in difficulty and for his needs should not prejudice the rights of other confreres, the Community, and the People of God.