**2. ORIENTATIONS AND DIRECTIVES**

**2.1. Preliminary investigation: procedural notes**

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The Vicar of the Rector Major or the Legal Office frequently receives from the Provincials or Provincial Vicars requests on how to proceed when they receive a notification of a confrere’s conduct attributable to a canonical crime *(crimen).*[[1]](#footnote-1)

This is a good sign; in fact, it can be seen how a practice and a canonically correct procedure is being consolidated in the face of an accusation of a confrere. This aspect is also part of the culture of legality and sense of justice which, as Salesians, we are always called to promote. This process is called a preliminary investigation; it aims at making clarity and truth in the face of an accusation.

The preliminary investigation envisaged in these cases is governed by cann. 1717-1719 of the Code of Canon Law. It constitutes the procedure to be used also in the preparatory phase required by can. 695 concerning mandatory dismissal of a religious and can. 696 concerning the dismissal of a religious in the judgement of the Superior. It gives legal certainty to the decisions of the Superior himself.

To this end, a *Vademecum* containing the canonical regulations and the instructions for the procedure to be followed, has been prepared for any report of an external violation of a canon law or of a precept which calls for a penalty. The instructions contained in the *Vademecum* are general in nature; they should be integrated with the most detailed prescriptions, possibly issued by the individual Bishops’ Conferences and in full respect of the civil laws of each country.

This *Vademecum* will be sent soon to the Provincials. What follows below is the scheme of the document, so that every confrere may be aware of the procedure.

**1. First phase: *notitia criminis and initiation of proceedings***

The procedure is initiated following the emergence of a *notitia criminis* regarding a confrere. The first phase is articulated in various moments and consequent acts.

1.1 The *criminis* notification: Mode of emergence

1.2 First assessment of the authenticity of the notification and the obligation to initiate the investigation

1.3 Preparatory Acts of the Investigation: Appointment of the Instructor and the Notary

1.4 Eventual precautionary measures

**2. Second phase. *The investigation***

In this second phase, the Instructor assisted by the Notary, collects the information needed to determine whether the *notitia* *criminis* has a reasonable foundation. In particular, he will have to ascertain the facts, the circumstances, the imputability of the confrere.

Several actions are foreseen:

2.1 Convocation and interrogation of the complainant

2.2. Convocation and interrogation of witnesses

2.3 Collection and verification of other evidence

2.4 Convocation and interrogation of the confrere investigated

2.5 Instructor’s Report

2.6 Time-frame of investigation

**Third phase.** ***Evaluation of the outcome of the investigation***

Upon delivery of the investigative records and report, the Instructor terminates his job, subject to the subsequent request for a supplementary inquiry. The Provincial, who is always responsible for the proceedings initiated, has a central role in this third phase, for the acts he makes and the decisions he takes.

3.1 Study and evaluation of acts

3.2 Decree closing the inquiry or requesting a supplement

3.3 Examination of the conclusions of the inquiry by the Provincial Council

3.4 Opinion of the Provincial Council

3.5 Decision of the Provincial by decree

3.6 Eventual submission of the Acts to the Rector Major

The *Vademecum* then has a section devoted to the *delicta graviora,*[[2]](#footnote-2) and the specific attentions to have in mind at each stage; in particular, the Vicar of the Rector Major must be notified immediately. The judgment on such *delicta* is reserved for the Congregation for the Doctrine of the Faith. In these In fact, if after the investigation the allegations are credible, the case must be forwarded to the Congregation for the Doctrine of the Faith through the Rector Major.

1. According to can. 1321 §1 CIC, the term “crime” refers to the external violation of a canon law or a precept for which a punishment is foreseen, gravely imputable by reason of malice or negligence. The Code of Canon Law, in the second part of Book VI, identifies penalties for individual delicts as established in cann. 1364-1398. It should also be noted that the general norm of can. 1399, establishes that the external violation of a divine law or canonical law can be punished by a just penalty but “only when the special gravity of the violation requires punishment and urges the need to prevent or repair scandals.” [↑](#footnote-ref-1)
2. *Delicta graviora* are the most serious crimes committed against morals. They are included among the reserved delicts referred to in Articles 1-6 of the *Normae de delictis Congregations pro Doctrina Fidei reservatis* issued by the Congregation for the Doctrine of the Faith on May 21, 2010. [↑](#footnote-ref-2)