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## Protection of Minors in the Current Canon Law

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## Protection of Minors in the Current Canon Law

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### Introduction

The protection of minors constitutes a challenge for each human society including the Catholic Church. The Church, thanks to its long experience, offers a clear conception of different “orders” of natural persons: person of adult age, adults, and minors.

Starting from the description of the evolution of canonical regulation concerning these three “orders” of persons and of the legal limitation of the activities of minors, I will try to present two kinds of the legal protection of minors: first, the indirect protection consisting in the guarantee of the possibility of an autonomous action by minors, then the direct protection in the procedural law and in the penal law, especially in the difficult matter of crimes against morality, and I shall attempt, at the same time, at identifying to what degree this regulation has its foundation in the divine law or merely in the ecclesiastical law.

## 1. Concept of minors in the canon law in the 20th century

In this chapter we want to present the evolution of the concept of a minor in the canon legislation over the 20th century.

### 1.1. Codification before the Second Vatican Council

In the period before the Second Vatican Council, in the 20th century, there was only one complete code, the Code of Canon Law from 1917 (hereinafter: CIC/1917) for the Latin Church.<sup>1</sup> The codification prepared for Eastern Churches had not been completed before the Second Vatican Council, it had been published in parts since 1949, and until 1957 there was promulgated only four of the intended five parts. The last published part in 1957, *motu proprio Cleri sanctitati*, regulated the safeguarding of the Oriental rites, the life of clergy, the hierarchical structure and the general norms, including norms about natural and moral persons (today called juridical persons).<sup>2</sup>

#### 1.1.1. In the CIC/1917

The CIC/1917 defines a major person and a minor one in can. 88 § 1: *Persona quae duodevigesimum aetatis annum explevit, maior est; infra hanc aetatem, minor.* In the following § 2 of the same canon it defines adult persons: *Minor, si masculus, censetur pubes a decimoquarto, si femina, a duodecimo anno completo.*<sup>3</sup> Furthermore, it is important that any autonomous juridical action of a minor can occur only after the acquisition of the use of reason, what is presumed in the age of 7 years<sup>4</sup> (cf. can. 88 § 3).

<sup>1</sup> Cf. E. EICHMANN, K. MÖRS DORF: *Lehrbuch des Kirchenrechts auf Grund des Codex Iuris Canonici*. Paderborn 1953, pp. 43—44.

<sup>2</sup> J. DVOŘÁČEK: *Východní kanonické právo*. Praha 2014, pp. 22—26.

<sup>3</sup> The English translation of the can. 88: “§ 1. A person who has completed the twenty first year of age has reached majority; below this age, a person is a minor. § 2. The male minor is considered to be adult by achieved the fourteenth, the female one by achieved the twelfth year of age.”

<sup>4</sup> E. EICHMANN, K. MÖRS DORF: *Lehrbuch des Kirchenrechts auf Grund des Codex Iuris Canonici...*, pp. 196—197.

A text of big practical importance is the definition of legal capacity to autonomous actions of minors in the next can. 89: *minor in exercitio suorum iurium potestati parentum vel tutorum obnoxia manet, iis exceptis in quibus ius minores a patria potestate exemptos habet.*<sup>5</sup>

### 1.1.2. In the motu proprio *Cleri sanctitati*

The motu proprio *Cleri sanctitati* defines major and minor persons in can. 17 § 1: *Persona quae duodevigesimum aetatis annum explevit, maior est, firmo iure particulari provectionem aetatem assignante; infra hanc aetatem, minor.*

In the following text of the § 2 of the same canon of the motu proprio defines adult persons: *Minor, si masculus, censetur pubes a decimo quarto, si femina, a duodecimo anno completo.*<sup>6</sup>

The possibility of autonomous actions of minors is described by the next can. 18: *minor in exercitio suorum iurium potestati parentum vel tutorum obnoxia manet, iis exceptis in quibus ius minores a patria potestate exemptos habet.*<sup>7</sup>

### 1.1.3. Summary

We can state that the formulation of the Latin legislation and of the Oriental one is nearly the same. The only one difference consists in the possibility to determinate a higher age for achieving the age of a major by the particular law of an Oriental Church.

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<sup>5</sup> The English translation of the text of can. 89: "A minor, in the exercise of his or her rights, remains subject to the authority of parents or guardians except in those matters in which minors are exempted from the paternal authority by law."

<sup>6</sup> The English translation of the text of can. 17: "§ 1. A person who has completed the twenty-first year of age has reached majority, without prejudice to the prescripts of particular law determining higher age; below this age, a person is a minor. § 2. The male minor is considered to be adult by achieved the fourteenth, the female one by achieved the twelfth years of age."

<sup>7</sup> The English translation of the text of can. 88: "A minor, in the exercise of his or her rights, remains subject to the authority of parents or guardians except in those matters in which minors are exempted from the paternal authority by law."

## 1.2. Codification after the Second Vatican Council

The codification after the Second Vatican council encompasses two complete codes: the Code of Canon Law from 1983 (hereinafter: CIC/1983) for the Latin Church and the Code of Canons of Eastern Churches from 1990 for the Oriental Catholic Churches (hereinafter: CCEO).

### 1.2.1. In the CIC/1983

The CIC/1983<sup>8</sup> defines a major person in the can. 97 § 1: *Persona quae duodevigesimum aetatis annum explevit* and in the same text consequently says: *infra hanc aetatem, minor*.<sup>9</sup> The CIC/1983 does not indicate a definition of an adult person. The possibility of minors for their autonomous activity is described by the next can. 98 § 2: *Persona minor in exercitio suorum iurium potestati obnoxia manet parentum vel tutorum, iis exceptis in quibus minores lege divina aut iure canonico ab eorum potestate exempti sunt*.<sup>10</sup>

### 1.2.2. In the CCEO

The CCEO<sup>11</sup> defines a major and at the same time a minor in the can. 909 § 1 with the same words: *Persona, quae duodevicesimum aetatis annum explevit, maior est; infra hanc aetatem minor*.<sup>12</sup> The CCEO does not, however, formulate a definition of an adult person.

The capacity of minors for autonomous activity is described by the next can. 910 § 2: *Persona minor in exercitio suorum iurium potestati paren-*

<sup>8</sup> *New commentary on the Code of Canon Law*, pp. 142—143.

<sup>9</sup> The English translation of the can. 97 § 1: “A person who has completed the eighteenth year of age has reached majority; below this age, a person is a minor.”

<sup>10</sup> The English translation of the can. 98 § 2: “A minor, in the exercise of his or her rights, remains subject to the authority of parents or guardians except in those matters in which minors are exempted from their authority by divine law or canon law.”

<sup>11</sup> *Corpus iuris canonici II, Commento al Codice dei canoni delle Chiese Orientali*, pp. 783—784.

<sup>12</sup> The English translation of the can. 909: “A person who has completed the eighteenth year of age is a major, below this age, a person is a minor.”

*tum vel tutorum subest eis exceptis, in quibus minores iure divino vel canonico ab eorum potestate exempti sunt.*<sup>13</sup>

### 1.2.3. Summary

We can state that the regulation in the both contemporarily valid codes is the thing that causes bigger peace for all interested persons and institutions.

## 1.3. Comparison and recapitulation

We can indicate four clear differences between the regulation after and before the Second Vatican Council:

1. The age for being a major has been reduced to 18 years in comparison with previous 21 years.
2. There no longer exists the possibility to establish a higher age for being major in the particular Oriental legislation, therefore, only the limit of 18 years is now valid in the entire Catholic Church.
3. The postconciliar legislation does not define the age of adulthood.
4. There is a more accurate description of the possibility of autonomous activities of minors: exceptions contained in the divine or canon law.

In the next chapter we want to present the most important possibilities of the latter activities.

## 2. Capacities of autonomous activities of minors

In this chapter we want to emphasize the most important capacities of autonomous activities of minors, while trying to specify to what degree it is a matter of divine law or of the canon law.

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<sup>13</sup> The English translation of the can. 910 § 2: “In the exercise of his or her rights, a minor person is under the authority of parents or guardians, with the exception of those areas in which minors by divine or canon law are exempt from their power.”

Because of the almost identical legal regulation in the CIC/1983 and in the CCEO, we describe the singular matters in a more synthetic way than in the first chapter. Because of the importance of these affairs we indicate the very legal text.

## 2.1. Autonomous activities in the area of the personal status

The basis for analysis of the autonomous activities of minors in the area of the personal status can be found in the description of the rights and obligations of all the Christian faithful. We will emphasize the rights, because there it is possible to act more voluntarily and autonomously.

### 2.1.1. Free choice of a state of life

The free choice of a state of life is guaranteed in can. 219 of CIC/1983 and in can. 22 of CCEO with the same words: *Christifideles omnes iure gaudent ut a quacumque coactione sint immunes in statu vitae eligendo.*<sup>14</sup>

The choice of a state of life is neither really nor legally reserved for major persons, because rather often it is possible, that the own state of life is chosen in the age of minors, even shortly after the age of discretion, as it is testified by the Church history, especially in the life of many saints.

We are persuaded that this freedom is based on the divine law.

### 2.1.2. Receiving of an assistance from the pastors of the church

The right to receive assistance from the pastors of the Church is defined in can. 213 of CIC/1983 and in can. 16 of CCEO by the same

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<sup>14</sup> The English translation of the text of can. 219 of CIC/1983 and of the can. 22 of CCEO: "All the Christian faithful have the right to be free from any kind of coercion in choosing a state of life."

words: *Ius est christifidelibus ut ex spiritualibus Ecclesiae bonis, praesertim ex verbo Dei et sacramentis, adiumenta a sacris Pastoribus accipiant.*<sup>15</sup>

Although it is often necessary to push the minors to use the pastoral assistance, on the other hand it is big joy for parents, educators and clergymen, when the minors alone request such assistance.

Also this right is to our mind based on the divine law.

### 2.1.3. Communication of their needs and of their opinions to the pastors

The right to communicate their needs to the pastors is guaranteed in can. 212 § 2 of CIC/1983 and in can. 15 § 2 of CCEO with the same words: *Christifidelibus integrum est, ut necessitates suas, praesertim spirituales, suaque optata Ecclesiae Pastoribus patefaciant.*<sup>16</sup>

The right — and sometimes even a duty — to communicate to the pastors their opinion for the good of the Church is defined in can. 212 § 3 of CIC/1983 and in can. 15 § 3 of CCEO by the same words: *Pro scientia, competentia et praestantia quibus pollent, ipsis ius est, immo et aliquando officium, ut sententiam suam de hisquae ad bonum Ecclesiae pertinent sacris Pastoribus manifestent.*<sup>17</sup>

These rights develop the latter mentioned right to receive the spiritual help: they also include the initiative of minors, taking into account the possibility of their solid professional knowledge permitting their expert help to the pastors.

This right, to our mind, is also based on the divine law.

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<sup>15</sup> The English translation of the text of the can. 213 of CIC/1983 and of the can. 16 of CCEO: “The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments.”

<sup>16</sup> The English translation of the text of the can. 212 § 2 of CIC/1983 and of the can. 15 § 2 of CCEO: “The Christian faithful are free to make known to the pastors of the Church their needs, especially spiritual ones, and their desires.”

<sup>17</sup> The English translation of the text of the can. 212 § 3 of CIC/1983 and of the can. 15 § 3 of CCEO: “According to the knowledge, competence, and prestige which they possess, they have the right and even at times the duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church.”

#### 2.1.4. Protection of the good reputation and the privacy

The right of protection of the good reputation and the privacy is expressed by the can. 220 of CIC/1983 and by the can. 23 of CCEO with the same words: *Nemini licet bonam famam, qua quis gaudet, illegitime laedere, nec ius cuiusque personae ad propriam intimitatem tuendam violare.*<sup>18</sup>

The good reputation is quite natural condition for worthy life, its violation brings many damages. Even more, it is valid for the protection of the privacy, especially of the intimacy (which will be described in point 4 discussing the penal law).

Therefore, we estimate these rights to come from the divine law.

#### 2.1.5. Protection of own rights in general

We want to conclude the description of main autonomous activities of minor by the general protection of own rights, described broadly (therefore, we do not excerpt the very text) in the can. 221 of CIC/1983 and in can. 24 of CCEO.

This protection includes:

1. Vindication and defence of rights in the competent ecclesiastical forum.
2. Judging according to the prescripts of the law applied with equity/equality? (it shall be discussed in point 3).
3. Punishment with canonical penalties except according to the norm of law (it shall be discussed in point 4).

This protection inherent to every human being, regardless of their age, but only persons having the use of reason can actively defend their rights. This possibility is to be seen as derived from the divine law — only the specification of technical means is to be done by the canon law.

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<sup>18</sup> The English translation of the text of the can. 220 of CIC/1983 and of the can. 23 of CCEO: “No one is permitted to harm illegitimately the good reputation which a person possesses or to injure the right of any person to protect his or her own privacy.”

## 2.2. Autonomous activities in the area of the sacramental life

### Baptism

The practice of the Church distinguishes two ways of receiving baptism: as an infant and as an adult, without defining the adult age (cf. can. 851 of CIC/1983 and cann. 681 and 682 of CCEO). Minors with the use of reason are compared to adults for receiving baptism by the law (can. 851 § 1 of CIC/1983, cf. can. 682 § 1 of CCEO).

With the baptism is connected belonging to a determinate Church *sui iuris*. The terminology used in CIC/1983 and in CCEO differs. While can. 111 of CIC/1983 speaks not specifically about “rites” and “ritual Church” and can. 112 of the same code about “ritual Church *sui iuris*,” can. 27 and 28 of CCEO distinguish clearly the conception of a rite and of a “Church *sui iuris*.” In each case, can. 111 § 2 of CIC/1983 and can. 30 of CCEO gives to a minor who completed the 14 years of age the choice of belonging to a Church *sui iuris* in occasion of his baptism; under this age the minor belongs the Church *sui iuris* primarily of his father, secondarily of his mother, even in the case of their transfer to another Church *sui iuris*, but he can return to the original Church *sui iuris* upon completion of the 14th year of age (cann. 111 and 112 § 1, 3° of CIC/1983, cann. 29 and 34 of CCEO). As we see, the age limit of 14 years is of a big importance.<sup>19</sup>

Nonetheless, it is permitted to take on the function of a sponsor to a minor by a person of at least 16 years of age (can. 874 § 1, 2° of CIC/1983) or of the age required by particular law (can. 685 § 2 of CCEO).<sup>20</sup>

### Confirmation

The Latin practice of the sacrament of confirmation is very different from the Oriental one.<sup>21</sup>

In the Latin Church the celebration of confirmation — with the exception of the baptism of an adult (cf. can. 866 of CIC/1983) — is separated from the celebration of baptism. Furthermore, in the ordinary situations it is necessary that the person to be confirmed reaches the age of discretion and the administration should be after a due preparation; the exception is done for the danger of death (cann. 889 and 891 of CIC/1983). But the

<sup>19</sup> D. SALACHAS: *Teologia e disciplina dei sacramenti nei Codici latino e orientale: studio teologico-giuridico comparativo*. Bologna 1999, pp. 101–104.

<sup>20</sup> *Ibidem*, pp. 90–93.

<sup>21</sup> We do not deal the difference of the terminology: the confirmation in CIC, the Chrismation with holy myron in CCEO. Cf. J. DVOŘÁČEK: *Východní kanonické právo. Úvod do studia...*, p. 96.

conference of bishops can elevate the requested age (can. 891) — theoretically to the age of majors.

In the Oriental Churches the celebration of confirmation is usually connected with the celebration of baptism, even in the case of infants (cann. 692 and 695 § 1 of CCEO). These two celebrations can be separated only in a case of true necessity, and it is to be seen that the confirmation is administered as soon as possible.<sup>22</sup>

There are in the both codes the same conditions for sponsors as it is in the case of sponsors for baptism (see above).

### Eucharist

The Latin practice of the administration of the Eucharist differs from the Oriental one.

The Latin discipline requires for allowed administration of the Most Holy Eucharist to children that they have sufficient knowledge and careful preparation so that they understand the mystery of Christ according to their capacity and are able to receive the body of Christ with faith and devotion; only in case the danger of death is sufficient that the children can distinguish the body of Christ from ordinary food and receive communion reverently (can. 913 of CIC/1983). Therefore, the Latin tradition excludes the administration of the Eucharist to infants.

According the Eastern tradition it is possible to administer the Eucharist to infants in occasion of their baptism as part of the integral Christian initiation, otherwise the prescriptions of the liturgical books of each Church *sui iuris* are to be observed (can. 710 of CCEO).<sup>23</sup>

### Sacraments of Penance and of Unction of the Sick

The Latin legislation requires explicitly the use of reason for receiving the sacraments of penance and of the unction of the sick (cann. 989 and 1004 of CIC/1983), the Oriental legislation requires it only implicitly (cann. 718 and 737 § 1 of CCEO). In the doubt whether the sick person has attained the use of reason, the unction of the sick is to be administered (can. 1005 of CIC/1983), and the care of the administration of the unction obliges pastors of souls and persons who are close to the sick (can. 738 of CCEO).<sup>24</sup>

<sup>22</sup> D. SALACHAS: *Teologia e disciplina dei sacramenti nei Codici latino e orientale...*, pp. 125—134.

<sup>23</sup> *Ibidem*, pp. 167—172. L. SABARESE. *Collocazione dell'Eucaristia tra i sacramenti dell'iniziazione cristiana*, pp. 47, 55—56.

<sup>24</sup> D. SALACHAS: *Teologia e disciplina dei sacramenti nei Codici latino e orientale...*, pp. 265—266, 295—297.

Only the Oriental legislation obliges explicitly the faithful, who is aware of serious sin, to receive the sacrament of penance as soon as possible (can. 719 of CCEO).

Without prejudice to the obligation of annual confession for persons with the use of reason (can. 989 of CIC/1983) or of the frequent confession according the particular law (can. 719 of CCEO),<sup>25</sup> the administration of the sacrament of penance is bound to the initiative of a particular recipient, which includes minors.

### The sacrament of Holy Orders

The administration of the deacon or priest ordination (and *a fortiori* of the episcopal ordination) to minors is excluded by the prescripts of the required age, in each case higher than 18 years (cann. 1031 and 378 of CIC/1983, cann. 759 and 180 of CCEO).<sup>26</sup> Only CCEO admits explicitly the possibility of administration of minor ordinations according the particular law (can. 327), but it is not probable that minor persons could be admitted to those ordinations. Even extended commentaries to the CCEO do not deal with this topic.<sup>27</sup>

In the area of the sacrament of holy orders, the autonomous activity of minors is practically excluded.

### Sacrament of Marriage

In the whole tradition of the Church, an achievement of sufficient maturity was required for weddings. The Church legislation in the 20th century describes the minimal age uniformly: 16 years for men and 14 years for women (can. 1067 § 1 of CIC/1917, can. 57 § 1 of the *motu proprio Crebrae allatae sunt* from 1949, can. 1083 of CIC/1983 and can. 800 of CCEO).<sup>28</sup>

Therefore, minors could and can validly celebrate a marriage, ideally according their will. On the other hand, pastors were even obliged to take care to dissuade youth from the celebration of marriage before the age at which a person usually enters marriage according to the accepted

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<sup>25</sup> Cf. *Corpus iuris canonici II, Commento al Codice dei canoni delle Chiese Orientali*, pp. 603—604.

<sup>26</sup> D. SALACHAS: *Teologia e disciplina dei sacramenti nei Codici latino e orientale...*, pp. 337—339.

<sup>27</sup> Cf. *ibidem*, pp. 290—291; *A guide to the Eastern Code: a commentary on the Code of canons of the Eastern churches*, pp. 268—271.

<sup>28</sup> The history of the prescribed age for spouses before *Crebrae allatae sunt* (i.e. the age of 14 years for males and 12 years for females) and the preparation of the actual legislation is presented by D. SALACHAS: *Il sacramento del matrimonio nel Nuovo Diritto Canonico delle Chiese orientali*. Bologna 1994, pp. 96—97; *Il matrimonio nel Codice dei canoni delle Chiese orientali*, pp. 156—160, 132.

practices of the region (can. 1067 § 2 of CIC/1917, can. 57 § 2 of the *motu proprio Crebrae allatae sunt* and can. 1072 of CIC/1983). The prudence regarding marriages of minors is clearly expressed by the prohibitions to pastors, to celebrate or to bless matrimonies of minors without previous permission of the local ordinary, when the parents are unaware or reasonably opposed (can. 1071 § 1, 4° of CIC/1983 and can. 789, 4° of CCEO).<sup>29</sup>

As we see, in the matter of matrimony are the possibilities of autonomous activities of minors very limited.

### 3. Protection in the procedural law

Minors are usually not quite able to know the law and to defend their rights; therefore, the canon law protects them in various ways which we want to describe briefly.

#### 3.1. Capacity to act as a party in a trial

Generally, minors cannot act as a party (the petitioner or respondent) themselves, only through their parents, guardians, or curators (can. 1478 § 1 of CIC/1983, can. 1136 § 1 of CCEO).

There are two exceptions: first, in the case of conflict between the rights of a minor and the rights of the parents, guardians, or curators, according the deliberation of the judge — in such a case the judge appoints a new guardian or curator (can. 1478 § 2 of CIC/1983, can. 1136 § 2 of CCEO); second, in spiritual cases and those connected with spiritual matters — the minor with the use of reason can act (petition or respond) himself or herself and without the consent of their parents or guardian (can. 1478 § 3 of CIC/1983, can. 1136 § 3 of CCEO).<sup>30</sup>

<sup>29</sup> *New commentary on the Code of Canon Law*, pp. 1645—1646; *Corpus iuris canonici II, Commento al Codice dei canoni delle Chiese Orientali*, pp. 952—953.

<sup>30</sup> *New commentary on the Code of Canon Law*, pp. 1645—1646; *Corpus iuris canonici II, Commento al Codice dei canoni delle Chiese Orientali*, pp. 661—663; *Il matrimonio nel Codice dei canoni delle Chiese orientali*, p. 132.

On the other hand, in a contentious trial which involves minors, the judge is to appoint *ex officio* a defender for a party who does not have one; the only exception is in marriage cases, where even the minor can act himself (can. 1481 § 3 of CIC/1983, can. 1139 § 3 of CCEO). If the defender (guardian, curator, or procurator) rescinds from that function, the trial is suspended in the meantime and the judge is to appoint another guardian or curator as soon as possible (can. 1519 of CIC/1983, can. 1200 of CCEO).<sup>31</sup>

### 3.2. Ability to stand as a witness

Generally, the minors can stand as witnesses in a trial only from the age of 14 years, but the judge can permit an exception, if he finds it expedient (can. 1550 § 1 of CIC/1983, can. 1231 of CCEO). By this limitation is protected the minor in of an early age.<sup>32</sup>

### 3.3. Advantage in the *restitutio in integrum*

For the reasons of peace, every use of legal remedy is limited by law. The time limitation of request for the *restitutio in integrum* is rather strict — there are peremptory terms, which do not run as long as the injured person is a minor (can. 1646 § 3 of CIC/1983, can. 1327 § 3 of CCEO). This provision of law gives an extraordinary protection for minors.<sup>33</sup>

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<sup>31</sup> *New commentary on the Code of Canon Law*, pp. 1267—1271; *Corpus iuris canonici II, Commento al Codice dei canoni delle Chiese Orientali*, pp. 956—957.

<sup>32</sup> *New commentary on the Code of Canon Law*, pp. 1678—1679; *Corpus iuris canonici II, Commento al Codice dei canoni delle Chiese Orientali*, pp. 1029—1030.

<sup>33</sup> *New commentary on the Code of Canon Law*, p. 1747; *Corpus iuris canonici II, Commento al Codice dei canoni delle Chiese Orientali*, pp. 1067—1068.

## 4. Protection in the penal law

The penal law has to regulate difficult situations connected with fall of a human being. It seems appropriate to protect minors in two directions: as perpetrators of criminal acts and as victims of such acts because of their generally lower level of discretion and because of their bigger vulnerability.

### 4.1. Reduction of the culpability

Regardless of general reasons of an exclusion of a reduction of culpability, there is taken into account the singular conditions of minors.

There are differences in the matter of an exclusion of the penal culpability between the Latin legislation and the Oriental one. According to the Latin code, minors below the age of 16 are totally excluded from penal culpability (can. 1323, 1° of CIC/1983), in the Oriental code this limit is set lower: only 14 years of age (can. 1413 § 1 of CCEO).

Mostly similar is the regulation concerning the reduction of the penal culpability: for each criminally liable person under the age of 18 years, the penalty established by law or precept must be tempered or a penance should be employed in its place (can. 1324 § 1, 4° of CIC/1983, can. 1413 § 2 of CCEO). Because of lack of *latae sententiae* penalties in the Oriental canon tradition, only the Latin legislation excludes minors from the *latae sententiae* penalties (can. 1324 § 2 of CIC/1983).<sup>34</sup>

### 4.2. Protection in the area of offences against morality

Each offence against morality causes a notable wound for its victim, all the more for young persons, *a fortiori* for minors.

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<sup>34</sup> *New commentary on the Code of Canon Law*, pp. 1542—1543; *Corpus iuris canonici II, Commento al Codice dei canoni delle Chiese Orientali*, pp. 1117—1118.

### 4.2.1. In the Codes

Minors are protected by the penal law in the cases of offences against morality *expressis verbis* only if the perpetrator is a clergyman. There are four different bodies of the crime: the first is concubinage (can. 1395 § 1 of CIC/1983, can. 1453 § 1 of CCEO), the second is another external sin against the Sixth Commandment of the Decalogue (can. 1395 § 1 of CIC/1983, can. 1453 § 1 of CCEO), the third is another offense committed against the Sixth Commandment of the Decalogue with a minor below the age of 16 years (can. 1395 § 2 of CIC/1983, it is not regulated by CCEO), and the fourth is the solicitation of a penitent to sin against the Sixth Commandment of the Decalogue in the act, on the occasion, or under the pretext of confession (can. 1387 of CIC/1983, can. 1458 of CCEO).<sup>35</sup>

In the Latin penal law, other crimes against morality could be punished on the basis of the general norms — can. 1399 of CIC/1983, but such a norm lacks from the CCEO.<sup>36</sup>

### 4.2.2. In the legislation regarding *graviora delicta*

The Pope Saint John Paul II promulgated in 2001 very important norm of canon law: *motu proprio Sacramentorum sanctitatis tutela*, which finally regulates the matter of crimes reserved to the Congregation for the Doctrine of the Faith (cf. can. 1362 of CIC/1983 and can. 1152 of CCEO). One of decisive reasons for this legislation was the scandal caused by cases of sexual abuses of minors committed by Catholic clergymen. The very penal legislation is to be found in the subsequent document of the Congregation for the Doctrine of the Faith *Epistula a Congregatione pro Doctrina Fidei missa ad totius Catholicae Ecclesiae Episcopos aliosque Ordinarios et Hierarchas interesse habentes: De gravioribus delictis eidem Congregationi pro Doctrina Fidei reservatis* (hereinafter *Normae de gravioribus delictis*) a few days later. The norms were amended in 2010 by a similar document *Normae de delictis Congregationi pro Doctrina Fidei reservatis seu Normae de delictis contra fidem necnon de gravioribus delictis*.

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<sup>35</sup> *New commentary on the Code of Canon Law*, pp. 1598—1601, 1591—1592; *Corpus iuris canonici II, Commento al Codice dei canoni delle Chiese Orientali*, pp. 1144—1145, 1147.

<sup>36</sup> J. DVOŘÁČEK: *Východní kanonické právo. Úvod do studia...*, p. 139.

This legislation brings very important changes:

- There is changed the age of a victim in the case another offense committed against the Sixth Commandment of the Decalogue with a minor from 16 to 18 years, therefore the new legislation covers the entire age of the minor (cf. can. 1395 § 2 of CIC/1983).
- The above-mentioned body of the crime is extended to the Eastern Catholic Churches too, with the same obligation.
- In the amended *Normae de gravioribus delictis* from 2010 there is defined a new crime, the child pornography: the acquisition, possession, or distribution by a cleric of pornographic images of minors “under the age of fourteen,” for purposes of sexual gratification, by whatever means or using whatever technology (Art. 6 § 1, 2°).
- In a case of all such crimes, an ordinary or a hierarch has to manage the preliminary investigation. If the result thereof is not negative, he is obliged 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 warrants, against a sentence of the first instance only to the Supreme Tribunal of the very same Congregation (Art. 16).
- In 2011, the above-mentioned congregation sent a letter to all ordinaries and hierarchs imposing to all conferences of bishops the elaboration of guidelines for dealing with cases of sexual abuses of minors perpetrated by clerics until May 2012, which have to be recognised by the same congregation. The guidelines have to contain not only norms for investigation of the sexual abuses in due collaboration with civil authorities, but also (and above all) norms for an effective prevention of such crimes.

We can conclude that by this way the legislation for the protection of minors in the penal law achieved in the Catholic Church a very high level.

## Conclusions

The analysis of the evolution of the concept of a minor in the canon law in the 20th century leads to three interesting conclusions: (1) the age of minors was reduced from 21 years in the legislation before the Second Vatican Council to 18 years in the legislation after the said council; (2) the age of adulthood is now equal for the entire Catholic Church in the current legislation; (3) there is no more a legal definition of the age of

adulthood in the current legislation, but the analysis of other norms of the canon law shows so lucidly the importance of the limit of 14 years of age, that this limit works practically as the age of adulthood.

The protection of minors includes two different matters: the direct protection (especially in the penal law), and the indirect one, the guarantee of the capacity of an autonomous action by minors.

The autonomous action can be stated by the divine law, or by the canon law. The canonical regulation of such action in the area of the personal status is clearly founded on the basis of the divine law. The regulation in the area of sacramental life is founded on the divine law, but the details are regulated merely by the ecclesiastical laws. And last but not least, the regulation in the procedural law is regulated only by ecclesiastical laws.

The direct protection of minors is regulated partly in the procedural law, above all the protection of spiritual goods and in the situation of a conflict of interests between minors and their guardians, curators or procurators, and also by an advantage in the *restitutio in integrum*. The most important part of the direct protection consists in the regulation in the penal law: the reduction of the culpability for minors and the special guarding in the area of *graviora delicta*, particularly in the area of crimes against morality, where the recent legislation guarantees very high level of the protection. Besides its basis in the divine law, all this norms (in the procedural law and in the penal law) are merely ecclesiastical law.

The legal protection of minors cannot be ever perfect, and therefore it has to be developed continuously. On the other hand, the means of the current canon law (including norms of the divine law and of the merely ecclesiastical law) create a solid basis for an effective protection of minors.

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DAMIÁN NĚMEC

## Protection of Minors in the Current Canon Law

### Summary

Outgoing from a short analysis of the conception of minors, adults and persons of major age in the canon law in the 20th century, the author presents two ways of the protection of minors in the current canon law: the guarantee of their autonomous actions (personal status, cooperation with pastors of the Church, law of sacraments) and the very protection of their rights above all in the procedural law and in the penal law. Withal the author tries to identify to what degree this regulation has its fundament in the divine law or in the merely ecclesiastical law.

DAMIÁN NĚMEC

## La protection des mineurs dans le droit ecclésiastique contemporain

### Résumé

En commençant par une courte analyse de la notion de personnes mineures, adultes et majeures dans le droit canonique du XX<sup>e</sup> siècle, l'auteur présente deux moyens de protéger les mineurs dans le droit canonique contemporain : garantie de leur fonctionnement autonome (statut personnel, coopération avec les prêtres, activité sacramentelle) et protection des droits des mineurs avant tout dans le droit formel et pénal, tout en précisant à quel point cette réglementation base sur le droit divin et à quel sur le droit purement ecclésiastique.

**Mots clés :** théologie, droit canonique, protection du droit, autonomie juridique, personne physique, mineurs, adultes, majeurs, droits des personnes, droit aux sacrements, droit pénal, droit formel

DAMIÁN NĚMEC

## La tutela dei minorenni nel diritto canonico contemporaneo

### Sommario

Iniziando da una breve analisi del concetto delle persone minorenni, adulte e maggiorenni nel diritto canonico del XX secolo, l'Autore presenta due modi di tutelare i minorenni nel diritto canonico contemporaneo: la garanzia della loro azione autonoma (status personale, collaborazione con i sacerdoti, attività sacramentale) e la tutela stessa dei diritti dei minorenni soprattutto nel diritto processuale e penale, precisando quanto tale regolamentazione si basi sul diritto di Dio o sul diritto puramente ecclesiastico.

**Parole chiave:** teologia, diritto canonico, tutela giuridica, autonomia giuridica, persona fisica, minorenni, adulti, maggiorenni, diritti personali, diritto dei sacramenti, diritto penale, diritto processuale