

Delicta Graviora

A Short Commentary on
the Substantial Norms of the *Motu Proprio*
Sacramentorum sanctitatis tutela
(30 April 2001)

The *Delictum gravius*

- Definition: A deviance of a grave nature against divine natural, divine positive, ecclesiastical law which offends:
 - morals
 - celebration of the sacraments

The *Delictum gravius*

Characteristics

- gravity/seriousness in the ecclesiastical context
- tendency to consider them similar to *capital crimes*
- hardly any statute of limitations/prescription
- special tribunals/procedures
- usually punished with the highest punishments and the traditional declaration of *infamia*

The *Delictum gravius*

Reservatio to the CDF

- Why the CDF? (*PE 52/SST 1 § 1*)
- What of other jurisdictions?
 - absolute incompetence
 - duty to refer to CDF

<p>Delicts against the Most Holy Sacrifice and Sacrament of the Eucharist (SST Art. 2)</p>
<ul style="list-style-type: none"> ■ SST Art. 2, § 1, 1° Profanation of the Eucharistic Species -PCLTI Responses 04.06.1999; CIC 1317ICCEO 1442 ■ SST Art. 2, § 1, 2° Attempted celebration of the Eucharist -CIC 1378 § 2, n. 1 ■ SST Art. 2, § 1, 2° Simulation of the Eucharist -CIC 1379; CCEO 1443 ■ SST Art. 2, § 1, 3° Prohibited concelebration of the Eucharist -CIC 908, 1345; CCEO 702, 1440 ■ SST Art. 2, § 2 Prohibited or sacrilegious consecration of one species without the other -CIC 917

<p>Delicts against the holiness of the Sacrament of Penance (SST Art. 3)</p>
<ul style="list-style-type: none"> ■ SST Art. 3, 1° The absolution of an accomplice -CIC 1378 § 1; CCEO 1457 ■ SST Art. 3, 2° Sollicitation -CIC 1317; -CIC 1458 ■ SST Art. 3, 3° Direct and indirect violation of the Seal -CIC 1388 § 1; CCEO 1456 § 1 ■ SST Art. 3, 4° Recording and transmission of confession -Decree of the CDF, 23.09.1988

<p>Delict of sexual abuse of a minor under 18 (SST Art. 4)</p>
<p>§1 The delict:</p> <ul style="list-style-type: none"> - A violation of the VI Commandment - Committed by a cleric - With a minor under 18 years <p>■ §2 The punishment</p> <ul style="list-style-type: none"> - According to the gravity of the offence - Not excluding dismissal from the clerical state <p>(CIC 1395 §2)</p>

<p>SEXUAL ABUSE OF A MINOR</p>
<ul style="list-style-type: none"> ■ An external, objectively grave violation of the sixth commandment ■ Need not be a complete act of intercourse ■ Need not involve force, physical contact, or a discernible harmful outcome ■ [CDF Jurisprudence re: possession of paedophile pornography]

<p>FORMS OF NONCONTACT AND CONTACT SEXUAL ABUSE OF CHILDREN From <i>Rape of the Innocent</i>, by Julian Whetwell-Mitchell (Taylor and Francis, 1995) figure 4, page 8.</p>
<ul style="list-style-type: none"> ■ FORMS OF NONCONTACT SEXUAL ABUSE OF CHILDREN <ul style="list-style-type: none"> ■ Sexual Comments ■ Exhibitionism ■ Voyeurism ■ Watching Pornographic Films/Videos ■ FORMS OF CONTACT SEXUAL ABUSE OF CHILDREN <ul style="list-style-type: none"> ■ Open-mouth Kissing ■ Handling or Fondling ■ Oral Sex ■ Frottage ■ Pornography (child participates in making of sexually explicit videos or pictures) <ul style="list-style-type: none"> ■ Intercourse ■ Anal Sex ■ Bestiality (sexual acts with animals)

<p>Prescription/Statute of limitations (SST Art. 5)</p>
<ul style="list-style-type: none"> ■ §1 Decennium (10 years) ■ §2 Normal running (CIC 1362, § 2) <ul style="list-style-type: none"> - special provision for sex abuse cases: from 18th B'Day of victim ■ - <i>Actio criminalis</i> (CIC 1362 §2) ■ - <i>Actio poenalis</i> (CIC 1363) ■ Faculty of the CDF to derogate from prescription in particular cases - <i>Ex auctoritate Sanctae Pontificae</i> 7 November 2002

1101(a)

The relevance and use of CIC 1399

■ Can. 1399. Besides the cases stated here or in other laws, an external violation of a divine or an ecclesiastical law can be punished by a just penalty only when the particular seriousness of the violation demands punishment and there is an urgent need to preclude or repair scandal.

- Applicable for cases not covered expressly by the law
- Ex can. 1349: penalty of dismissal cannot be applied.



Guiding Principles



- The Holy See is fully supportive of the Bishops' efforts to combat and to prevent sexual abuse of minors by clerics.
- The universal law of the Church has always recognized this crime as one of the most serious offences which sacred ministers can commit, and has determined that they be punished with the most severe penalties, not excluding - if the case so requires - dismissal from the clerical state (cf. Canon 1395 § 2).

Guiding Principles

- The decision of the Holy Father that this crime should be included among the most serious delicts ("graviora delicta") of clerics, underscores the Holy See's aversion to this betrayal of the trust which the faithful rightly place in Christ's ministers, and ensures that the guilty will be appropriately punished.



Guiding Principles




- As the Holy Father has affirmed on various occasions, the Holy See is spiritually united to the victims of abuse and to their families, and encourages particular concern for them on the part of the bishops, priests and the whole Catholic community.
- Local legislation is intended as an instrument which will help to give effective protection to minors and to restore, wherever necessary, the trust of the faithful in their pastors.

Guiding Principles




- Local legislation should assure at the same time the defence of the innocent and the just punishment of the guilty.
- They should establish a rigorous and precise procedure to punish in a just way those who are guilty of such abominable offences because, as the Holy Father has said, "there is no place in the priesthood and religious life for those who would harm the young" (23 April 2002).
- At the same time, by ensuring that the true facts are ascertained, procedural norms protect inviolable human rights - including the right to defend oneself - and guarantee respect for the dignity of all those involved, beginning with the victims.


	Guiding Principles 
	<ul style="list-style-type: none"> ■ Canonical procedure should uphold the principle, fundamental in all just systems of law, that: <ul style="list-style-type: none"> ■ a person is considered innocent until <ul style="list-style-type: none"> - either a regular process - or his own spontaneous admission proves him guilty.

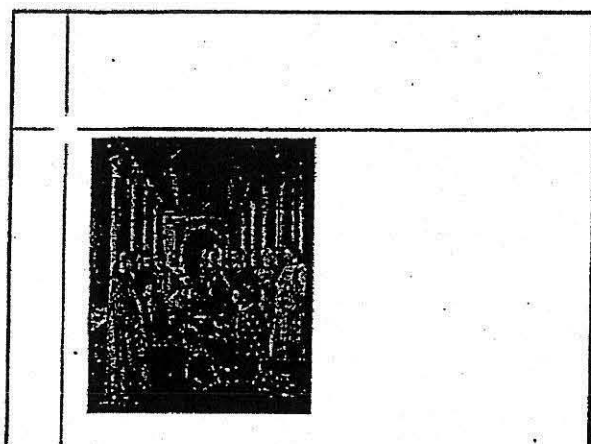
	Guiding Principles
	<ul style="list-style-type: none"> ■ The body of canonical norms that [the CDF] is called to apply with justice and equity strives to guarantee both the exercise of the right of defence of the accused and the demands of the common good. <p>John Paul II, 6 February 2004</p>

	Guiding Principles
	<ul style="list-style-type: none"> ■ Once the offence has been proven, it is necessary in each case to assess carefully both the just principle of proportionality between fault and punishment, as well as the predominant need to protect the entire People of God. <p>John Paul II, 6 February 2004</p>

	Guiding Principles
	<ul style="list-style-type: none"> ■ [The protection of the People of God] does not only depend on the application of canonical penal law. Its best guarantee is the correct and balanced formation of future priests who are explicitly called to embrace with joy and generosity that humble, modest and chaste lifestyle that is the practical basis of ecclesiastical celibacy. <p>John Paul II, 6 February 2004</p>

	Guiding Principles 
	<ul style="list-style-type: none"> ■ The Holy See, feels duty-bound in justice and in gratitude to reaffirm and defend the good name of the overwhelming majority of priests and deacons who are and have always been exemplary in their fidelity to the demands of their vocation but have been offended or unjustly slandered by association. ■ As the Holy Father has said, we cannot forget "the immense spiritual, human and social good that the vast majority of priests and religious ... have done and are still doing".

	Guiding Principles 
	<ul style="list-style-type: none"> ■ Indeed, it appears necessary to devote every available resource to restoring the public image of the Catholic priesthood as a worthy and noble vocation of generous and often sacrificial service to the People of God.



The *Notitia Criminis* and the ensuing Preliminary Investigation

The Law

- MP SST Art. 13
- CIC 1717

A. The *Notitia Criminis*

- denunciation by the victim: credibility of the person; motives
- denunciation by third parties: reliability; motives for report
- media reports
- referral by the statutory authorities
- admission of the cleric: *forum internum non-sacramentale*; *forum externum*

B. The Preliminary Investigation

- The focused referral of the matter reported: alleged perpetrator; alleged victim; time; place; acts or actions
- The credibility of the allegations in themselves
- The credibility or reliability of the source
- Notoriety/Publicity of the accusations
- Ways and Means: respectful of both canon and civil law; professional and not amateur; mindful of the demands of the common good but not forgetful of the rights and dignity of both the Alleged Perpetrator and the Alleged Victim.

C. Referral to Local Review Boards

- Full compliance with diocesan policies
- Transparency of proceedings
- Confidentiality
- Role of Alleged Victim
- Role of Alleged Perpetrator
- Role of Lawyers

D. Referral to Statutory Authorities	
	<ul style="list-style-type: none"> ■ Local civil laws should be respected ■ Court orders should be followed

E. The Decision of the Bishop	
	<ul style="list-style-type: none"> ■ The decision as to what should be done by way of follow-up is to be taken the Bishop ■ Allegations which are clearly unfounded or unreliable should be dismissed as such ■ Other Allegations should be examined carefully

E / 2	
	<ul style="list-style-type: none"> ■ Referral of the Accused for Psychological Evaluation should meet the demands of moral theology, human dignity, the common good ■ The ministry of the Accused cleric should <i>pro bono Ecclesiae</i> be immediately limited if there is an indication that it may constitute a risk for minors or a scandal to the faithful.

E / 3	
	<ul style="list-style-type: none"> ■ Therapy offered to the alleged victim should be reasonable and effective ■ Extra-judicial settlement of allegations should not be construed as hush-money

Referral to the CDF	

Referral to the CDF Role of the ordinary	
	<ul style="list-style-type: none"> ■ SST Art. 13 & CIC 1717 ■ Standard Information: <ul style="list-style-type: none"> -Personal Data and Curriculum Vitae of Cleric; -Details of Allegations; -Risk Assessment; -Sustenance Questions; -Votum of the Ordinary concerning penal procedure; -expediency of any future ministry. <p>Summary of Case following standard tabulate provided by the CDF</p>

Referral to the CDF Role of the CDF The discretion described in CIC 1718 §1
<ul style="list-style-type: none"> ■ Whether one can proceed with a penal process 1° ■ Whether it is expedient \neq can. 1341 ■ Whether <ul style="list-style-type: none"> - to do a judicial process - or proceed for <i>dimissio ex officio</i> - or suggest use of can. 1720 with referral to CDF for dismissal by decree

Referral to the CDF Role of the CDF The discretion described in CIC 1718
<ul style="list-style-type: none"> ■ §2 revocation/amendment of decision ■ §3 decision in CP (<i>Congresso Particolare</i>) ■ §4 CDF may preemptively consider question of damages <p>Canon 1719</p>

Decision for a Judicial Process (SST art. 13)
<ul style="list-style-type: none"> ■ in the diocese ■ <i>coram Congregatione: advocatio</i> <i>Conditio: appellatio semper ad CDF; SST art. 14</i>

Some practical points Concerning the Application of the <i>Motu Proprio</i> <u>Sacramentorum Sanctitatis tutela</u> (2001)

A <u>Referral of Cases to the CDF</u>
<ul style="list-style-type: none"> ■ The CDF will appreciate as much information as possible on the preliminary investigation and the findings of the diocesan review boards or equivalent consultative organs. ■ Bishops are invited to send their own <i>votum</i> concerning the merits of the case and the procedures and measures to be adopted.

B <u>Dimissio ex officio</u>
<ul style="list-style-type: none"> ■ Very grave cases, especially where custodial sentences have been inflicted by the civil authorities, will be considered by the CDF for direct referral to the Holy Father. ■ The priest concerned should first be asked whether he wants to ask for laicization and he should be accorded an opportunity to express himself on the matter. ■ The CDF asks for a dispensation from clerical celibacy in each case.

	<ul style="list-style-type: none"> ■ Once the Holy Father decrees dismissal from the clerical state and the Diocese is notified of the decree, the local Ordinary should ensure that the dismissed cleric is not left without some sort of financial support (can. 1350, §2). ■ In cases of sexual abuse of minors, the Ordinary should also take care, with the help of the statutory authorities, that the dismissed cleric does not harm children or the young.
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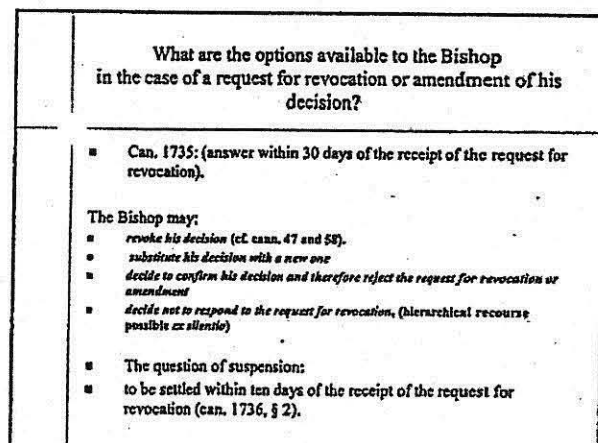
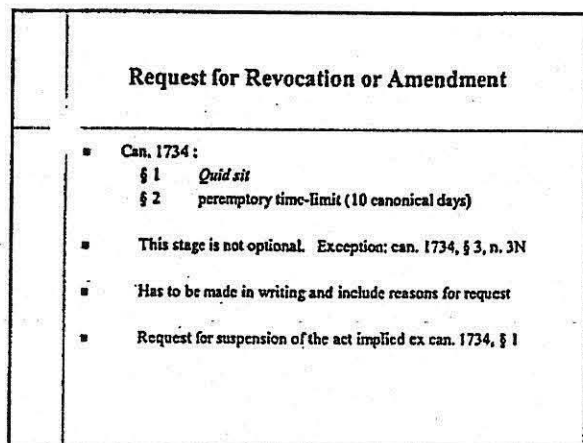
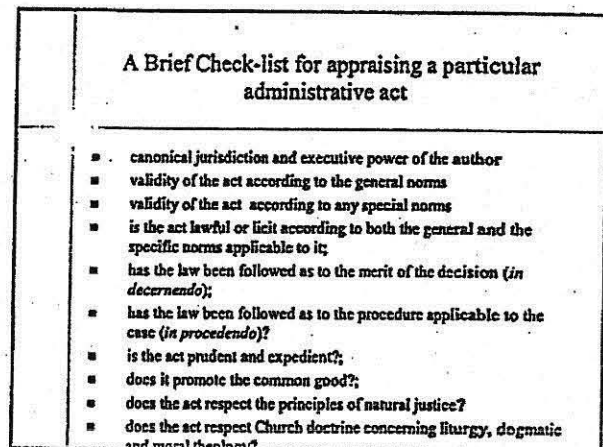
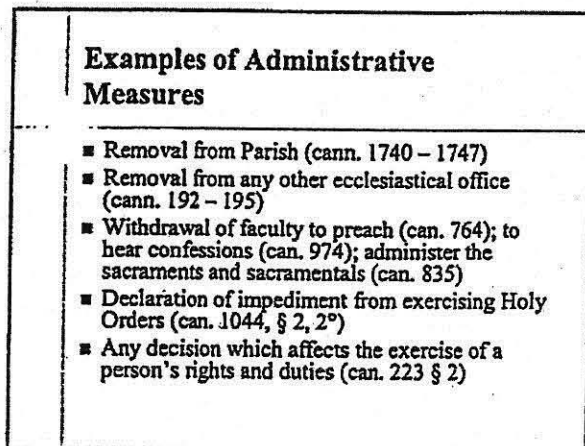
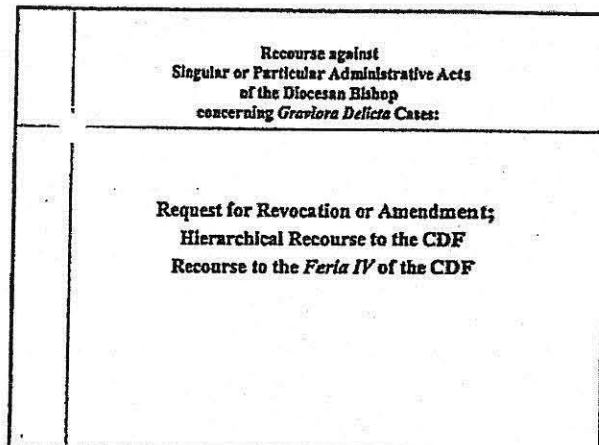
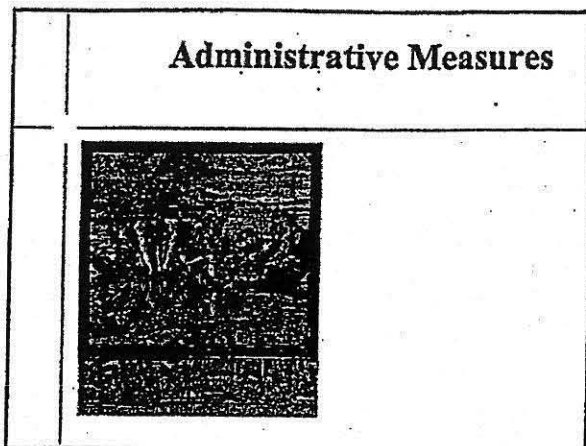
	<p>C <u>Administrative Penal Procedures</u></p> <ul style="list-style-type: none"> ■ On 7 February 2003 the Holy Father authorised a derogation of the MP 557 art.7 permitting Administrative Penal Procedures for cases involving <i>graviora delicta</i>. ■ The use of this administrative procedure has to be authorised by the CDF. ■ It involves the application of can. 1720 that should be followed closely.
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	<p style="text-align: center;">Canon 1720</p> <ul style="list-style-type: none"> ■ If the Ordinary believes that the matter should proceed by way of an extra-judicial decree: <ol style="list-style-type: none"> 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 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 a 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.
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	<p style="text-align: center;">CDF Praxis concerning can. 1720</p> <ul style="list-style-type: none"> ■ It should be clear that the Ordinary may freely decree a penalty short of dismissal from the clerical state. ■ If he deems it expedient and appropriate that dismissal be decreed, he should refer the matter to the CDF and transmit all the acts of the case. ■ The Prefect on behalf of the CDF will then decide whether or not to decree dismissal. ■ Recourse to the Ordinary Session of the CDF (<i>Feria IV</i>) is possible against the decision of the Prefect.
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	<p>D <u>Judicial Penal Procedures</u></p> <ul style="list-style-type: none"> ■ These judicial procedures have to be authorised by the CDF. ■ First Instance Tribunals: Diocesan bishops are invited to constitute their own first instance tribunals for <i>graviora delicta</i> cases. ■ Any requests for dispensations concerning personnel should be referred to the CDF.
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	<ul style="list-style-type: none"> ■ Second Instance CDF Tribunals: Second Instance has been reserved exclusively to the CDF. <p>The CDF is however open to the possibility of nominating local canon lawyers as ad hoc judges of its Supreme Tribunal. The CDF will invite the local bishops to suggest names of canon lawyers of good repute who would be CDF judges and promoters of justice nominated by the CDF.</p>
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Hierarchical Recourse to the Holy See	
	<p>Having received an answer which still aggrieves him or having received no answer within thirty days of the Bishop's receipt of the request for revocation,</p> <ul style="list-style-type: none"> ■ the petitioner or recurrent has the right to make hierarchical recourse (can. 1737, § 1). ■ The competent hierarchical superior in cases of <i>graviora delicta</i>: the Congregation of the Doctrine of the Faith. ■ Time-limit: peremptory; fifteen canonical days of the notification of the new decree or response of the Bishop (can. 1737, § 2). ■ Presentation of arguments; ■ a copy of all the necessary documentation; ■ the question of damages

The Dicastery subjects the recourse to a preliminary check-list:	
	<ul style="list-style-type: none"> ■ Does the subject-matter fall under the competence of the Dicastery?; ■ Does the recurrent or petitioner have legal-standing?; ■ Has the request for revocation or amendment been previously made to the Bishop?; ■ Have the time-limits for the request for revocation and for hierarchical recourse been respected?; ■ Failure on one of these preliminary tests = rejection <i>in limine</i> by the Dicastery.

The Procedure at the CDF (<i>Regolamento Generale della Curia Romana</i> , art. 136, § 1; cann. 1732-1739; 50 - 51)	
	<ul style="list-style-type: none"> ■ CDF asks for the comments of the Bishop on the merits of the recourse (can. 50). ■ CDF may also ask the petitioner for further details or documents. ■ Can. 1738 (the right for legal representation) ■ CDF may suspend the administrative act of the Bishop (can. 1737, § 3) ■ The Dicastery considers an equitable resolution of the contention (can. 1733, § 3) ■ Possible extension of the three-month period for answering ex can. 57, § 1 (RCCR, art. 136, § 2)

The Procedure at the CDF (<i>Regolamento Generale della Curia Romana</i> , art. 136, § 1; cann. 1732-1739; 50 - 51)	
	<ul style="list-style-type: none"> ■ Decisions are taken by the Superiors of the CDF: the Cardinal Prefect or the Archbishop Secretary during the <i>Congresso Particolare</i> or <i>Feria VI [Feria Sexta]</i>. ■ The CDF as hierarchical Superior therefore has the authority <ul style="list-style-type: none"> ▪ to substitute the discretion of the Bishop with its own; ▪ to declare the administrative act null and void; ▪ to annul or rescind the act; ▪ to change or modify the act of the Bishop.

Recourse to the <i>Feria IV</i> of the CDF	
	<ul style="list-style-type: none"> ■ <i>Regolamento Generale della Curia Romana</i>, art. 135 ■ two types of recourse against administrative acts issued by a Roman Dicastery: <ul style="list-style-type: none"> - Art. 135, § 1: request for revocation - Art. 135, § 2: recourse to the Apostolic Signatura re: alleged violations of the law <i>in decernendo</i> or <i>in procedendo</i> according to art. 123 of <i>Pastor bonus</i>. <p>Decision of the Pope <i>ex audientia</i> <i>dies 14 Februarii a. 2003</i>: in the case of decisions of the CDF concerning <i>graviora delicta</i> these two recourses should be only directed to and exclusively decided by the <i>Feria IV</i> of the CDF</p>

Elements of the Procedure before the <i>Feria IV</i> / 1	
	<ul style="list-style-type: none"> ■ <i>Preliminary questions</i> are addressed <i>in limine</i> ■ The Secretary asks the recurrent party to present <i>documents and arguments for the recourse</i>. ■ The parties are free to nominate advocates and procurators and they are both given the chance to present their respective arguments

**Elements of the Procedure
before the FERIA IV / 2 .**

- The Disciplinary Office prepares a *Relazione d'Ufficio* which ends with a *Dubium* to be presented to the *Feria IV* for decision.
- All the acts of the case are handed over to the Promoter of Justice for his *votum*.
- Copies of the main documents, recourses, briefs, *Relazione*, and *votum Promotoris Iustitiae* are distributed to the members of the Congregation in preparation for their meeting or *Feria IV*.

***Elements of the Procedure
before the FERIA IV / 3***

- The *Feria IV* will consider the recourse as to its merits as well as to the alleged violations of the law.
- The *Feria IV* enjoys the same wide spectrum of possibilities concerning its decision which can. 1739 gives to the hierarchical Superior with respect to hierarchical recourse
- The decision of the Ordinary Congregation (*Feria IV*) is not subject to any recourse and is therefore definitive.
- It is communicated to the parties concerned.
- The CDF itself oversees the execution of the decisions taken by the *Feria IV*.

