



Markus Graulich, Heribert Hallermann,
Das neue kirchliche Strafrecht.
Einführung und Kommentar
Münster: Aschendorf Verlag, 2021, 278 pp.

Penal law is one of the sensitive areas of law, both by its delicate legal nature and by the sensitivity of its application for the addressees of penal norms, especially for the perpetrators of criminal offences. It is not surprising, therefore, that it has been subject to many changes, even complete revisions, throughout history, and this also applies to the penal law of the Catholic Church. These constant recasting of Church legislation had to respond not only to changes in Church life tied to changes in social development, but also to changes in secular law.

The present monograph *Das neue kirchliche Strafrecht* [The New Church Penal Law] focuses on the recent regulation of the penal law of the Catholic Latin Church *sui iuris*, usually known as the Roman Catholic Church. Although the overwhelming majority of Catholic Christians belong to this Church *sui iuris*, one cannot overlook the fact that this narrower definition for the Roman Catholic Church is absent from the title of the monograph.

The impetus for this publication is the promulgation of the new (or revised) text of Book VI of the 1983 Code of Canon Law, as implemented by Pope Francis by way of the Apostolic Constitution *Pascite gregem Dei* of May 23, 2021, while the new penal law itself came into force on December 8, 2021. The reason for such an extensive amendment was the considerable and obvious shortcomings of the original 1983 regulation, which Pope Francis clearly mentions in the aforementioned Apostolic Constitution:

In the past, great damage was done by a failure to appreciate the close relationship existing in the Church between the exercise of charity and recourse—

where circumstances and justice so require—to disciplinary sanctions. This manner of thinking—as we have learned from experience—risks leading to tolerating immoral conduct, for which mere exhortations or suggestions are insufficient remedies. This situation often brings with it the danger that over time such conduct may become entrenched, making correction more difficult and in many cases creating scandal and confusion among the faithful. For this reason, it becomes necessary for bishops and superiors to inflict penalties. [...] Charity thus demands that the Church's pastors resort to the penal system whenever it is required, keeping in mind the three aims that make it necessary in the ecclesial community: the restoration of the demands of justice, the correction of the guilty party and the repair of scandals.

Thus, the pope himself does not conceal that the existing regulation was not suitable for proper application for the benefit of the community of the faithful, that is, the Church, and that it was based on the considerable questioning of the meaning of penalties and penal law in the Catholic Church after the Second Vatican Council (1962–1965).

The present publication does not set itself high goals, as is usual in the case of extensive and detailed commentaries (of which one cannot fail to mention the book published at the same time: Bruno Fabio Pighin, *Il nuovo sistema penale della Chiesa* (Venezia: Marcianum Press, 2021), 655 pp. ISBN 978-88-6512-816-9). As the authors themselves state in their preface on page 9, they want to contribute to the spread of knowledge of the new penal law of the Catholic Church in the German-speaking area quite quickly, thereby giving impetus to a more in-depth study of penal law and its application as it will occur in the future.

It is not surprising that such a work required the collaboration of two experienced authors. The first is Markus Graulich, a Salesian of Don Bosco, born in 1964, ordained a priest in 1994, who received his doctorate in canon law in Rome in 1999 and his habilitation in Mainz in 2004. He lectures on the basics of canon penal law at the Pontifical Salesian University in Rome, has been an attorney at the Apostolic Signatura since 2009, a judge of the Roman Rota since 2011, and since 2014—undersecretary of the Pontifical Council for Legal Texts, now the Dicastery for Legal Texts. The second is Heribert Hallermann, born in 1951, ordained a priest in 1976, who achieved his doctorate in theology in Trier in 1996 and his habilitation also in Mainz in 1998. From 2003 to 2016 he was professor of canon law at the Julius-Maximilians-Universität in Würzburg; he is now professor emeritus.

The structure of the book itself follows from the intention of a short and clear presentation in the first place. First, on pages 12–17, the course of the five phases of the revision work is presented in detail by Mark Graulich: from the assignment given by Pope Benedict XVI in 2007, through the first scheme of 2011, distributed for observations, and the next two working schemes, to the definitive fourth scheme, that is, the draft submitted to Pope Francis at the be-

gining of 2021. The author does not specify what changes were made to the text between the first and last drafts. Although this would not be uninteresting, such information is of more relevance to specialists than to the general public for whom the publication is intended.

The following longer section of the text written by Heribert Hallermann (pp. 19–51) is devoted to an introduction to the principles and main lines of the new legislation, without claiming the completeness of this introduction, which is clear from the title *Kontinuität und Reform. Ein erster Einblick in den textus recognitus des Liber VI* [Continuity and Reform. A first insight into the textus recognitus of Liber VI]. It comments on the structure of the new Book VI, then on the one hand on its continuity in content and ideas with the former text from 1983, but, on the other hand, also on the changes introduced: a more determined will of the Church to apply the penal law, a more specific definition of penal sanctions, a clearer definition of the mission of ecclesiastical punishments, amended penalties and penal measures, new substantive description of criminal offences, a wider application of penalties, among others a broader range of penalties, including for lay persons holding ecclesiastical offices and performing ecclesiastical services, and an explicit requirement of compensation for damages as a condition for remission of penalties. Only in this part of the text are footnotes referring to sources, that is, normative texts and case law, and to scholarly publications in German, which corresponds to the basic purpose of this book.

This introduction is followed on pages 52–59 by the text of the apostolic constitution *Pascite gregem Dei* and on pages 60–105 the text of the new Book VI of the Code of Canon Law, in both cases in the Latin original and in a German translation, clearly with the aim of making the new regulation familiar in a German-speaking environment.

The fundamental contribution of the authors is then embodied in the commentaries on the individual canons on pages 107–216: Heribert Hallermann deals with the first, general part of the new regulation (canons 1311 to 1353), Markus Graulich—with the second part containing the definition of the individual *actus reus* and the associated penal sanctions (canons 1354 to 1399). The individual canons are given in the original Latin text and in German translation, and are accompanied by a short commentary, usually emphasizing the comparison with the former regulation of 1983, but also with the regulation contained in the first Code of Canon Law of 1917, since the new legislation returns to or builds on this (for us already ancient) regulation in a number of points. The nature of the first introduction to the subject is emphasized by the fact that there is no annotated apparatus in this part of the book referring to other specialist publications.

The emphasis on the comparison of the new 2021 regulation with the previous 1983 regulation is very appropriately expressed by providing a synopsis of the two legal texts. First, on pages 217–244, a synopsis of the original Latin text is provided, which is essential and useful even for those with only a ba-

sic knowledge of the Latin language. Most readers of this book, however, will find the synopsis of the German translations given on pages 245–278 more accessible, which would be realistically weakened by a significant change in the German legal terminology used in translations nearly thirty years apart. This, however, has not occurred due to the long and distinctive tradition of German canon law terminology, and this again facilitates the aim of this publication: a quick and concise introduction to the topic.

This publication, their joint work of two experts, is therefore an initial and essential introduction to the new penal law of the Latin Catholic Church *sui iuris*, and it does so in a quality manner. Although it does not set itself high professional goals, it is certainly a desirable professional and, in a way, popularizing contribution to the knowledge of Catholic Church law, which is underlined by the fact that the publication of this book was logistically and financially supported by the German Bishops' Conference. It is thus an indisputable asset for the German language area—and no doubt also for all those who wish to familiarize themselves with the new penal law of the Roman Catholic Church, especially thanks to the synopsis of the original 1983 text and the new 2021 text (although similar synopses are available elsewhere, for example, on the website of the Pontifical Gregorian University, *Risorse canonistiche*—www.iuscangreg.it).

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