

The Ban on Priests from Active Participation in Political Parties and Assumption of Public Office•

Prof. Luis Navarro

Pontifical University of the Holy Cross

- 1.- Historical premise
- 2.- The current legislation
 - a. Canon 285, §3
 - b. Canon 287
- 3.- Foundation of the prohibition: the identity and the mission of the cleric
- 4.- The Church and political action
- 5.- The application of prohibitions and their exceptions

In the last few months, news has appeared in the newspapers of several countries, regarding clerics who have actively joined national and local politics or who have decided to do so without any authorization from the competent ecclesiastical authority. In some cases it was about acts of a strictly political nature, like enlisting oneself in presidential, legislative or administrative elections; or to present, together with others, a motion of censure against the President of the Nation.¹ In other cases, political participation was expressed in

• *Philippine Canonical Forum*, 10 (2008), p. 111-140.

¹ This was the case of Bishop Msgr. Fernando Lugo Méndez, SVD, Emeritus Bishop of San Pedro who became a candidate, without any authorization of the Holy See in the presidential elections of 2008 in Paraguay. He had been nominated Bishop of the Diocese in 1994. In 2004 his letter of resignation was accepted, at the age of 57. Some documentation regarding this case is present at www.episcopal.org.py. In Quebec, Fr. Raymond Gravel of the Diocese of Joliette became a candidate of the separatist party Bloc Québécois for the elections of 27.XI.2006. He was elected a member of the Parliament. In the Philippines, Msgr. Deogracias

other ways, such as being present in protest movements aimed at overthrowing the power systems in place, both in the international and national levels, through rallies or encounters with the police force, even violent ones.²

Aside from the aforementioned interventions, there are others that cause great perplexity. It is about clerics who assume public office in civil society. We call to mind the cases of those clerics who occupied positions in the Sandinista government of Nicaragua³, or more recently the case of a diocesan priest who became the general manager of the post office in his country without his Bishop's authorization⁴. Occasionally some clerics have been nominated members or even presidents of commissions whose task was to mediate in some social conflicts or even to ascertain the truth of some crimes⁵.

Iñiguez, the bishop of Caloocan, presented to the Congress on 28 June 2006 a motion of censure against President Gloria Macapagal-Arroyo. Also in the Philippines a priest, Fr. Ed Panlilio, run for and was elected governor of the province of Pampanga in 2007, without having received the permission of his own Ordinary.

² Cfr. the case of Rev. Vitaliano della Sala. Cf. Decree of Removal, of 22.XI.2002 released by Dom Tarcisio Giovanni Nazzaro, Abate of Montevergine, which can be found at www.cdbchieri.it/rassegana_stampa/rimozione_don_vitaliano.htm.

³ In this case the Press Office of the Holy See and the Superior general of the Society of Jesus issued a Communiqué, on 10.VIII.1984, published in **Osservatore Romano (English edition)**, 20.VIII.1984, p.8. See the commentary of J. HERRANZ, in **Osservatore Romano**, on 26.VIII.1984. Both documents were later published under the title ***Circa la possibilità di assumere uffici pubblici da parte di chierici (can. 285 CIC)***, in **Apollinaris**, 57 (1984), pp.512-516. On this case, vid. G. WEIGEL, **Man of Hope**, New York (2002), pp.451-457. Other cases of the presence of clerics in public offices are reported in J. LYNCH, **Commentary on can. 285**, in **The Code of Canon Law. A Text and Commentary**, edited by J.A. Coriden, T.J. Green e D.E. Heintschel, New York (1985), p.224.

⁴ Such was the case of Fr. Wamuganda, who was appointed the director at the Postal Corporation of Kenya. He was chosen to occupy this task because he was considered to have the necessary qualities for this function. The Postal Corporation affirmed that “Fr. Wamuganda was selected for his rare qualities and valuable experience in administration, as well as his leadership qualities”, in **The Nation** (Nairobi), 24.X.2006. Cf. ***Queries Linger as priest takes up Top Posta Post***, at www.allafrica.com/stories/200610240450.html.

⁵ In the Philippines a Bishop was a member of a commission tasked with the investigation of the involvement of the Army and other social forces in the killing of some political leaders.

In the face of facts of this type it is normal that public opinion, mass media, and the Christian community itself are divided. For some it is tantamount to meddling in the lay sphere or a violation of the separation of Church and State.⁶ For others, on the contrary, these are actions in consonance with the commitment of clerics to weave the Gospel and its precepts into the fabric of the society where they live.

1.- Historical premise

Throughout history there have been cases in which clerics have assumed functions of public nature in governments, occupying even the highest positions. Even though it was not normal, in some circumstances it did happen. The law of the Church, attuned to life, has recognized that those exceptions could happen.

The normative regulations of the CIC of 1917 reflected this situation, also keeping in mind the historical setting of the period as well as the evaluation of both the political activity and public office.⁷ They foresaw that some members of the clergy could become senators or members of the parliament, obtaining the permission of the competent authority first, something that would not be desirable or even tolerated considering the current outlook.

In can. 139, precise indications were given regarding some activities considered alien to the office of the clergy: —§2 “sine apostolico indulto [...]

Also in the same country a Bishop presided over a commission entrusted with the production of a report on mining. These were the Melo and Bastes Commissions.

6 In Western Society, it often happens that every time the Bishops make declarations regarding moral aspects of the life of the society, certain social groups and political forces denounce that these interventions constitute interferences in the internal affairs of the society. They would prefer that the Church remain silent, without saying a word, shut in the sacristies. The Church would be a mere inconvenience that could be evicted.

7 Dealing with the **CIC 1917**, De Bernardis observed that: “il legislatore canonico del tempo aveva presenti piuttosto gli effetti che le cause, così che poteva anche apparirgli giuridicamente irrilevante il fatto che un chierico svolgesse quell’attività difficilmente qualificabile, che era allora l’attività politica, mentre non poteva ammettere che ricoprisse quegli incarichi pubblici ben definiti, che di tale attività costituiscono il concreto risultato: il legislatore secolare e il pubblico amministratore”. L.M. DE BERNARDIS, *Il clero e la politica tra il Codex del 1917 e quello del 1983*, in *Studi in memoria di Mario Condorelli, Vol. I/I*, Milano (1988), pp.455-456.

officia publica, quae exercitium laicalis iurisdictionis vel administrationis secumferunt, ne assumant.

—§4. Senatorum aut oratorum legibus ferendis, quos deputatos vocant, munus ne sollicitent neve acceptent sine licentia Sanctae Sedis in locis ubi pontificia prohibitio intercesserit; idem ne attentent aliis in locis sine licentiam tum sui Ordinarii, tum Ordinarii loci in quo electio facienda est”.⁸

In some cases the presence of clerics in public office was justified, since it was the result of a historical evolution that had given rise to Constitutions which prescribed that some senators and members of parliament should be high ranking clerics. On the contrary, in other cases the presence of the clergy in those positions was not only inconvenient, but would also cause damage to the Church and therefore there was an explicit and distinct prohibition of the Holy See, that could even provide for canonical sanctions, to the point of excommunication *ipso facto*, for those who would violate this ban. Depending on the circumstances the prohibition would become more or less intense, granting exceptions more or less easily.

Thus, in Hungary’s case there were moments when the participation of the clergy in political affairs was favored by the Holy See and other moments when their presence was absolutely forbidden. In fact Leo XIII, in his encyclical **Constanti Hungarorum** in 1893, asked the Church in Hungary to do everything in her power to fight the dangers that would undermine the freedom of the Church

⁸This norm was the object of two authentic interpretations. The first regarded the request and acceptance of the office of senator or deputy on the part of Cardinals, Archbishops and Bishops. The response was articulated: on one hand, one was determining that in the cases in which according to the Constitution of the Country these ecclesiastics had these offices *ex officio* and this was approved by the Holy See, therefore they are able to pursue these functions, provided that they provided for their functions in the dioceses through the Vicar General. In the other cases they obtained the license from the Holy See. Cf. P. COMMISSIO AD CODICIS CANONES AUTHENTICE INTERPRETANDIS, **Dubia circa canonem 139**, 25.IV.1922, in **AAS 14** (1922), p.313. The second response regarded the criteria for the concession of the license from the Ordinary to the priests who wanted to become a candidate. The response from the Holy See was that Ordinaries had to be more restrictive than broad. Cf. P. COMMISSIO AD CODICIS CANONES AUTHENTICE INTERPRETANDIS, **Dubia circa canonem 139**, 25.4.1922, in **AAS 14** (1922), p.313.

The Ban on Priests from Active Participation in Political Parties and Assumption of Public Office and to promote, among other things, men of proven virtue to be elected to the Parliament, at the same time reminding her that priests should not dedicate themselves to politics.⁹ On the other hand, following the deep changes that took place in that country, there was a strong and decisive intervention by the Holy See in 1957: the Sacred Congregation for the Council, given the situation the Church and the Hungarian Nation were in¹⁰, on one hand banned all clerics to seek or accept the public office of Member or any other office in Parliament; and on the other hand, if priests were already in office, they were obliged to resign, forbidding them to even join Parliamentary sessions.¹¹ The sanction for whoever would not follow these orders was *ipso facto* excommunication, reserved in particular to the Holy See.¹²

2.- The current legislation

Two canons of the 1983 Code of canon law are directly linked to the matter of participation of clerics in public life: can. 285, §3 and can. 287.¹³

⁹ Cf. LEO XIII, Enc. **Constanti Hungarorum**, 2.9.1893, in **Fontes III**, p. 407-408.

¹⁰ “Talia autem sunt in Hungariae Ditione rerum adiuncta ut prorsus expediat ecclesiasticos viros in dicta Natione a quavis politica activitate penitus abstinere”. S.C. CONCILII, Decretum **Cum activa**, 16.VII.1957, in **AAS 49** (1957), p.637. Earlier the same document stated “cum activa rebus politicis participatio haud consona sit viris ecclesiasticis, quorum munus totum est ad spirituale animarum bonum ordinatum, Ecclesia tandem nonnisi in omnino peculiaribus rerum adiunctis et subplane definitis permisit aut etiam esprese prohibuit, congruis quoque comminatis poenis, cum inde fidelium bono aliquod esset pertimescendum nocumentum”. *Ibid.*

¹¹ “Sacerdotes sive saeculares sive religiosi in Hungariae Ditione munus Deputati vel aliud quodcumque munus in Parlamento sollicitare aut acceptare prohibentur; sacerdotes vero, sive saeculares sive religiosi, qui munus aliquod in eodem Parlamento actu iam detinent, idem intra mensem a publicatione huius Decreti dimettere praecipuntur, simulque vetantur Parlamenti sessionibus adesse ac quacumquae operam prestare quibus vis activitatibus cum dimesso munere connexis”. S.C. CONCILII, Decretum **Cum activa**, *cit.*, p.637.

¹² Cf. *ibid.* p.637.

¹³ On the drafting of these canons, cf. E. PETERS (Ed.), **Incrementa in Progressu 1983 Codicis Iuris Canonici**, Montreal (2005), pp.234 & 236. See also D. SEQUEIRA, **Os presbíteros diocesanos e o seu envolvimento na política: proibição e excepção. Estudo histórico-canónico-teológico**, Roma (2004), pp. 237-246 and 270-277.

a. Canon 285, §3

The first text provides: “*Officia publica, quae participationem in exercitio civilis potestatis secumferunt, clerici assumere vetantur.*” **14** It is a clear and categorical prohibition.**15**

From the drafting process of this paragraph one could observe the following:

1) Up to the **Schema CIC of 1982**, the proposed text repeated many aspects already contained in the regulation in force after the promulgation of the CIC of 1917.**16** In fact, there was a distinction between Bishops and other clerics and also among the places where a pontifical prohibition was in force for the acceptance of public offices. Instead, following the final revision of the text made by John Paul II with a limited number of experts, there is a straightforward prohibition. That puts in light the *explicit will of the canonical Legislator* to confirm a clear general principle: *clerics do not assume public office.***17**

14 “Clerics are forbidden to assume public office whenever it means sharing in the exercise of civil power.”

15 Cfr. A. MIGLIAVACCA, *Commentary to can. 285*, in **Codice di diritto canonico commentato**, in **Quaderni di diritto ecclesiale**, Milano (2001), p.288.

16 Can. 289, §2: “*Officia publica, quae participationem in exercitio civilis potestatis secumferuntur Episcopi ne assumant sine licentia Sanctae Sedis; item eadem ne assumant alii clerici, nisi obtenta licentia Sanctae Sedis, in locis ubi intercesserit prohibitio pontificia; in aliis vero locis, licentia indigent tum Ordinarii proprii, tum Ordinarii loci in quo potestatem vel administrationem exercere intendunt*”. This text came from can.146 of the **Schema Libri II De Populo Dei** (The only difference is in the use of the term *laicalis*, rather than *civilis* regarding the *potestas*) and in it there is a substantial part of what was said in **CIC 1917** can.139, §2. In presenting the text the consulters were in agreement with “in eodem canone, §2 servandam esse solam prohibitionem officia publica exercendi quae secum trahunt exercitium laicalis iurisdictionis, et sub hac prohibitioni comprehendi etiam prohibitionem munera senatoris aut deputati quem vocant”. **Communicationes**, **16** (1984), p.181.

17 Provost underlines that the current version is much more stringent in regard to what the first proposed text stated, taken almost literally from **CIC 1917**: “the text as it now reads is the result of the review conducted by John Paul II with six advisors, and has changed the focus from the permission needed to obtain such offices to a strait prohibition”. J. PROVOST, *Priests and Religious in Political Office in the U.S.: A acnonical Perspective*, in WOODSTOCK THEOLOGICAL CENTER, **Between God and Caesar. Priests, Sisters and Political Office in the**

2) In the final text there is no reference to exceptions to the general principle or to which authority would be competent to authorize. Even if the prohibition can be dispensed by the Ordinary (in fact this dispensation is not reserved to the Holy See at least with regards to presbyters and transitional deacons¹⁸), the will of the Legislator is to reaffirm the principle, leaving the exception in a second level.

3) The civil power referred to in the text includes the legislative, executive and judicial power.¹⁹ Therefore the prohibition *only concerns some public positions*: those where the above mentioned civil powers are enjoyed. In fact there could be other positions which are not included in the prohibition. Actually in the versions of the text before **Schema CIC 1982**, it was specified that the prohibition concerned *especially (praesertim)* those positions which involve participation in civil power.²⁰ That meant that other activities were also not suitable for the clergy. Therefore, this prohibition initially included other activities that were considered inconsistent with being a cleric.²¹

b. Canon 287

United States, New York (1985), p.86.

¹⁸ The permanent deacons are not included in the prohibition in virtue of can. 288. Nevertheless every Episcopal Conference will indicate if it is opportune that permanent deacons occupy public offices.

¹⁹ It was understood that the expression “civil power” includes the legislative, administrative and judicial powers (in the *Relatio* of 1981 it is said that a Father explicitly asked for a clarification in this regard. The response of the Commission was that “*additio non videtur necessaria, quia subintellegitur*”. **Communicationes**, **14** (1982), p.173).

²⁰ With the suppression of the words “*ea praesertim*” the emphasis of the version of the **Schema CIC 1982** (can. 289, §2) was changed, putting attention only and exclusively to the offices that entail civil power.

²¹ In fact the words “*ea praesertim*” were added to the canon because two consulters noted that “*quaestionem ampliolem esse quam memoratam participationem in exercitio laicalis iurisdictionis; sunt enim multa officia et activitates quae exercitium huius potestatis non secumferunt, et tamen dedecent condicionem sacri ministri*”. **Communicationes**, **24** (1992), pp.281-282. Cfr. can. 146, §2 of **Schema canonum Libri II De Populo Dei**, in **Communicationes**, **14** (1982) p.82, and can. 260, §2 of **Schema CIC del 1980**, Libreria Editrice Vaticana (1980), p.58.

Can 287 is a completely new text in the universal legislation; there is no precedent in the old CIC. However, as we shall see, it is connected to the doctrine of the Second Vatican Council and the subsequent Magisterium. The text states the following:

Can. 287—§1. Clerici pacem et concordiam iustitia innixam inter homines servandam quam maxime semper foveant.

*—§ 2. In factionibus politicis atque in regendis consociationibus Syndacalibus activam partem ne habeant, nisi iudicio competentis auctoritatis ecclesiasticae, Ecclesia iura tuenda aut bonum commune promovendum id requirant.***22**

An analysis of the legal text, keeping in mind the different drafts, shows that in the first paragraph there is an exhortation for the clerics to promote peace and harmony, which is founded on justice. Particular attention is required on the part of the clergy to matters concerning peace and justice.

We cannot deduce from the canon the limits within which the cleric can freely act. In the first version of the text that later became canon 287 this commitment for peace and justice found its limit in the avoidance of contributing to internal conflicts and the disturbance of peace and order. This clause was eliminated because, according to the Joint Secretary to the Commission, in some cases the cleric cannot avoid joining such activities.**23**

In the second paragraph of this canon, not applicable to permanent deacons**24**, an interesting distinction is made between the intervention of the

22 Can.287—§1. Most especially, clerics are always to foster the peace and harmony based on justice which are to be observed among people.

—§2. They are not to have an active part in political parties and in governing labor unions unless, in the judgment of competent ecclesiastical authority, the protection of the rights of the Church or the promotion of the common good requires it..

23 It is worth noting that there was a proposal, present in the *Relatio* of 1981, to include again this delimitation, adding the words “*neve igitur intestinis bellis et ordinis publici perturbationibus opem quoque modo ferant*”. It was not accepted. Cf. **Communicationes**, **14** (1982), p.174.

24 Not even the prohibition of can. 287, §2 is applicable to them in virtue of can. 288. Nevertheless, the **Directory for the Ministry and Life of Permanent Deacons** rightly observes, after having recalled the role of particular law in these spheres, that “it remains strictly

The Ban on Priests from Active Participation in Political Parties and Assumption of Public Office clergy in political parties and trade unions. In the first instance, there is deliberate exclusion for the cleric to be an active member, because “active participation” includes both the management as well as interventions that affect the life of the political party. On the other hand, with regard to trade unions it is specified that the clergy cannot be leaders.²⁵

Further, we have to emphasize that in the final text of can. 287 the competent ecclesiastical authority to judge when the cleric must intervene directly, both in the political parties and in the management of the trade unions is not specified.²⁶ In contrast, in its previous versions, the competent ecclesiastical authorities were indicated indirectly: there was a reference to the canon dedicated to the prohibition of taking on public positions where the competent authorities for these cases were indicated. However it seems reasonable that the Ordinary of the cleric (for presbyters and deacons) and the Holy See (for Bishops) must necessarily intervene.

Not only is the competent ecclesiastical authority not indicated. The concrete criteria of evaluation that the ecclesiastical authority must use to authorize the involvement of the clergy in political parties and trade unions are not even

prohibited, in every case, the collaboration with parties and syndicate forces that are based on ideologies, practices, and coalitions that are incompatible with Catholic doctrine”. C. FOR THE CLERGY, **Directory for the Ministry and Life of Permanent Deacons**, 22.II.1998, n.13. In the final analysis, “the elevated functions to which they are confided by the Church ... render it inadvisable that they be directly involved in exercising political power”. J.OTADUY, **Comment on can. 288**, in **Exegetical Commentary on the Code of Canon Law, Vol. II/1**, Montreal-Chicago (2004), p.391.

²⁵ In the *Relatio* of 1981 it was asked to abolish the words *in regendis* of § 2. The response was to leave them because trade unions and parties are different. Cf. **Communicationes**, **14** (1982), p.174.

²⁶ With regard to the priests, the criteria established by the Synod of Bishops of 1971 could be followed: the competent authority shall be the Diocesan Bishop, having consulted the presbyterial council and if necessary the Episcopal Conference. A certain author has suggested following what was foreseen in other moments: for the priests and deacons, their proper Ordinary or the Ordinary of the place. The Holy See would be competent for the case of bishops or for the places in which there was a Papal prohibition. Cf. J. LYNCH, **Commentary on can. 287, §2**, in **New commentary on the Code of Canon Law**, edited by J.P. Beal, J.A. Coriden, T.J. Green, New York (2000), p.380.

indicated. How do we evaluate when the rights of the Church and the promotion of the common good require that involvement?

In conclusion for these two canons²⁷, one could say that in both cases there is a true prohibition, but at the same time some exceptions that allow the clergy to actively intervene in politics and trade unions as a leader or assuming public office, are permitted. There follows the need to find the right balance between prohibition and the permissible.²⁸ It is evident that achieving that balance is not easy.

This difficulty is also reflected in the way the topic has been handled by some canonists: in some cases the tendency is to analyze the exceptions to the prohibition attentively, underlining which cases are not included in the prohibition.²⁹ On the contrary, other authors strongly sustain that the cleric

²⁷ In connection with these bans, the Code establishes that the clerics are to take advantage of the exemptions granted by civil law from exercising functions and public civil offices that are foreign to the clerical state (cf. can. 289, §2).

²⁸ D. SEQUEIRA underlines the constant presence of this binomial in ecclesiastical legislation, in **Os presbíteros diocesanos e o seu envolvimento na política: proibição e excepção. Estudo histórico-canónico-teológico**, *cit.*

²⁹ It is significant that the only commentary that is made on can.287 is the following: “*Distinguendo fra partiti politici e associazioni sindacali, il §2 non intende proibire l’attività diretta in un partito politico, purché non assuma di fatto o di diritto un carattere pubblico oppure una militanza attiva*”. A. MIGLIAVACCA, **Commentary to can. 287**, in **Codice di diritto canonico commentato**, *cit.* p.289. Some authors have raised the question whether or not being a member of political parties was contrary to the norm. For Provost it could be possible: it would depend on the Country and the culture. “For example, in certain parts of Africa the very fact of belonging to a political party is itself to take an active role in politics. The bishops there have already told their clergy not even to enroll in a political party. In the United States, however, registering according to one political party or another does not make one a party activist and constitutes only a passive voice rather than an active role”. J. PROVOST, **Priests and Religious in Political Office in the U.S.: A Canonical Perspective**, *cit.* p.87. On the contrary, Otaduy holds that it is not possible because the ban “should also include membership, whose simple knowledge is susceptible of triggering the rejection that this canonical prohibition seeks precisely to stop”. J. OTADUY, **Commentary on can. 287**, *cit.*, p.386. Also Lynch underlines that “the clergy are not forbidden to *belong* to these organizations”. J.E. LYNCH, **Commentary on can. 287**, in **New Commentary to the Code of**

The Ban on Priests from Active Participation in Political Parties and Assumption of Public Office must dedicate himself to purely spiritual matters, to the point that some hold that “a general and binding rule to be followed with inflexible rigor must be imposed.”³⁰

I think that in order to go beyond these closed views, one must put aside the narrow analysis of the legal text and discover the reason for the existence of this norm, placing it in the framework of a deeper understanding of the role of the cleric in the Church and in society.

In fact, an analysis that is overly centered on the words of the two canons and their origins would proceed in these steps: first, it would inevitably bring us to dwell on matters like the meaning of the sentence “partem activam habere”, the meaning of a “political party”, “trade unions”, etc. and to emphasize some sentences that are found in drafting process, for instance that clerics also enjoy political and civil rights³¹ and that in some cases they cannot avoid the duty of intervening also in exceptional situations.³² Secondly, it would almost unconsciously move on to analyze what was omitted in the text to conclude that all of it is legal and therefore legitimate: as it was omitted, it is not forbidden. This razor edge analysis would necessarily lead us to think that the more

Canon Law, *cit.* p.380. Provost later widens the public and social presence of clerics: “The canons do not exclude clergy and religious from being members of labor unions, or from having membership in non-partisan political action committees, participating in non-partisan special interest organizations, or carrying on a lobbying effort. Thus it would be permissible for priests and religious to be members of a Right to Life group, Network, a peace movement, organizations for moral legislation, etc., but they could not be party workers for the Republican, Democratic, or other political parties”. J. PROVOST, **Priests and Religious in Political Office in the U.S.: A Canonical Perspective**, *cit.* p.87.

³⁰ L.M. DE BERNARDIS, *Il clero e la politica tra il Codex del 1917 e quello del 1983*, *cit.* p.461.

³¹ Regarding the discussion on some activity that is foreign to the clerical state a consulter said: “*affirmandum quoque esse clericos per se omnibus in Civitate gaudere iuribus, non secus ac alios cives*”. **Communicationes**, **16** (1984), p.182.

³² The Secretary of the Commission proposed to abolish the indications that separated clerics from certain conflicts (“*in intestinis bellis et ordinis publici perturbationibus nullam partem habeant*”) “*perché ci sono momenti nella storia di un paese per cui i chierici non possono restare indifferenti*”[“because there are moments in the history of a country for which the clerics cannot remain indifferent”]. **Communicationes**, **14** (1982), p.83.

exceptions to the rule are granted, the better it is, and consequently regret the fact that some ecclesiastical authorities are reluctant to grant those authorizations.

This way of understanding this norm would be further strengthened with this argument: since the topic concerns prohibitions, the principle established in can.18, according to which laws that “restrict the free exercise of rights (...) are to be strictly interpreted”, should be applied. If the political and civil rights of the clergy are limited by a norm, then the limitations must only be those absolutely necessary. In that view, the guiding principle for the interpretation of these canons could be: *what is not explicitly forbidden is permissible*. Therefore, where a prohibition does not exist, there is absolute freedom.

3.- Foundation of the prohibition: the identity and the mission of the cleric

The interpretation of these norms is to be done by identifying the *ratio legis*, in the awareness that these two canons are part of the juridical status of the clerics and that such status has its reason for existing in the identity and the mission of the cleric. In fact, the norms that outline that status are rooted in great measure in the effects of the sacrament of Holy Orders on the person who receives it and in the juridical effects deriving from it. Only in the light of these assumptions is one able to understand that there are some activities that are not in consonance with the person of the cleric, and that being a cleric may involve some limitations on one’s own autonomy.

According to the constant doctrine of the Church, also confirmed by recent magisterial documents³³, the sacrament of Holy Orders produces a special *configuration* with Christ, which renders the ordained a participant in the *consecration* of Christ and his *mission*.³⁴

³³ Cf. C. FOR THE CLERGY. **Directory for the Ministry and Life of Priests**, 31.I.1994, n.2.

³⁴ “To begin with we must emphasize that priestly life, created by the sacrament of Order, appears as a new existence, distinct from the kind of life of other members of the faithful. For, in the case of the priest baptismal consecration is overlaid with a new ontological consecration, that is, a configuration of his person which is now totally and irrevocably taken up in Christ, the shepherd of his people, and is orientated towards the fulfillment of a specific

For the presbyter and the bishop, the configuration happens in relation to Christ *the Priest*; they participate in Christ's priesthood in a specific way that is different from the other faithful; they possess the ministerial priesthood. Therefore a special configuration with Christ is produced, which differs essentially from that of the common priesthood.³⁵ Through the sacrament of the Holy Orders "they receive the mission and the faculty to act "in the person of *Christ the Head*"³⁶, in some specific circumstances.

He who receives the sacrament of the Holy Orders as deacon is not a priest, but he is ordained for ministry, for service. His identification is with "Christ, Lord and Servant to all."³⁷ The deacon does not act *in persona Christi Capitis*, but in *persona Christi Servitoris*.³⁸ The deacon receives in the sacrament the strength to serve the people "in the *diaconia* of the liturgy, in the word and in charity, in communion with the bishop and his presbyterate."³⁹

mission. The ministerial priesthood is, then, something which absorbs the entire life and activity of the priest: it is not a mere occupation which partially involves his intelligence and effectiveness or requires him to devote a greater or lesser part of his day. Whatever concrete circumstances a priest finds himself in, he always carries with him the vocational responsibility of being a representative of Jesus Christ, the head of the Church, and no sphere of his life or work can escape this call to total commitment." A. DEL PORTILLO, **On Priesthood**, Dublin (1974), p.63.

³⁵ Cf. SECOND VATICAN COUNCIL, Const. **Lumen Gentium**, n.10. See also the doctrine contained in the first part of the document from the C. FOR CLERGY AND OTHERS, **Instruction on some questions regarding the collaboration of lay faithful in the ministry of priests**, 15.VIII.1997, in **EV** 16/683-697.

³⁶ **The Catechism of the Catholic Church**, Vatican City (1992), n.875.

³⁷ C. FOR CATHOLIC EDUCATION, **Fundamental norms for the formation of permanent deacons**, 22.II.1998, n.5. «In virtue of his ordination the deacon is truly called to act in the name of Christ the Servant». C. FOR CLERGY, **Directory for the Life and Ministry of Permanent Deacons**, *cit.*, n.47.

³⁸ «Deacons share in Christ's mission and grace in a special way. The sacrament of Holy Orders marks them with an imprint ("character") which cannot be removed and which configures them to Christ, who made himself the "deacon" or servant of all». **The Catechism of the Catholic Church**, n.1570.

³⁹ SECOND VATICAN COUNCIL, Const. **Lumen Gentium**, n.29.

The sacrament of the Holy Orders produces therefore an *ontological* transformation in the person of the ordained: from that moment onwards, *forever*, he is configured sacramentally with Christ the Priest or Christ the Servant. The sacramental character created at ordination means that the ordained subject is ordained forever, with a permanent seal on his soul. That consecration to God can never become diminished and therefore the ordained will always be a priest or a deacon.⁴⁰

That special consecration and configuration with Christ does not find its end in the person of the ordained. The sacrament of the Holy Orders renders the faithful participants in the mission of Christ and confers the ability to fulfill some functions with regard to the *munera Christi*.⁴¹ For each level of the sacrament there correspond specific functions to which the ordained is destined. The Bishop is called to fulfill Episcopal functions: he is able to administer all sacraments (except matrimony⁴²) and he is also called to govern the particular Churches. Priests are also able to administer all sacraments as Bishops, except Holy Orders (and usually Confirmation), and are irreplaceable cooperators of the

⁴⁰ When strong voices were urging to have a temporary priesthood (*ad tempus*), Paul VI recalled in strong terms the traditional doctrine on the character as the base for a priesthood forever (*in aeternum*): that character is indelible, inerasable, a reality that cannot cease—an “*indelible impronta dello Spirito, che li qualifica sacerdoti in eterno, qualunque sia la loro metamorfosi, che essi esternamente e socialmente subiscono*”. PABLO VI, *Homily in the Mass ‘In coena Domini’*, 8.IV.1971,

at www.vatican.va/holyfather/paulvi/homilies/1971/documents/hfp-vihom19710408it.html.

On the priestly character, cf. PH. GOYRET, **Chiamati, consacrati, inviati. Il sacramento dell’Ordine**, Roma (2003), pp.147-157.

⁴¹ The reception of the sacrament of Orders places the ordained faithful in a new position in the Church and in relation to the other faithful. This was expressed in reference to the presbyter with the following words: “The priest is someone taken out from among the people of God, chosen and endowed with a special consecration who, because of the mission he has received, must live among and with the rest of men, understanding them, accompanying and guiding them on their journey; he acts on behalf of God who consecrated him and sent him out, just as Jesus Christ, the Son of God, willed to be like men in all things except sin.” A. DEL PORTILLO, **On priesthood**, *cit.*, p.23.

⁴² In regard to the ministers of the sacrament of matrimony, cf. **The Catechism of the Catholic Church**, n.1623 (new version).

The Ban on Priests from Active Participation in Political Parties and Assumption of Public Office Bishops. Finally, deacons fulfill certain functions of service in connection with the ministry of the Bishop and his presbyterate.⁴³

Aside from the effects of the personal nature, the distinction in the grades of the sacrament of Holy Orders produces the following: their incorporation in the *ordo clericorum* (and within it, to the corresponding *ordo: episcoporum, presbyterorum* or *diaconorum*⁴⁴), the destination to the functions corresponding to the *ordo* received and the faculty to exercise those functions. The same distinction of grades makes the communal dimension of the sacred ministry comprehensible; the priestly functions are tied with the episcopal ones: the presbyter acts in communion with his Bishop, because he is a *collaborator* of the Bishop.⁴⁵ Deacons on their part exercise functions of service in the framework of the mission of the Bishop and his presbyterate.

This complementary aspect of the ministries demands that every cleric performs his mission *in the Church and at the service of the Church*. The sacred minister receives the sacrament of the Holy Orders to serve the Church. This justifies that without forgetting the universal dimension of the mission of clerics,

⁴³ Cf. C. FOR CLERGY, **Directory for the Life and Ministry of Permanent Deacons**, n. 22-38, *cit.*, pp.89-104.

⁴⁴ For a more in-depth treatment of the relationships between the sacrament of Orders, the ministers, *ordines*, and for the distinction between that which is ministerial and that which is personal for the cleric, cfr. J. HERVADA, **Diritto costituzionale canonico**, Milano (1989), pp.188-226. I hold that a key element for an adequate understanding of the juridical state of the clerics is to have present that «il cosiddetto *ordo clericorum* è in realtà un'organizzazione, o più esattamente, una struttura organizzata, che costituisce l'ossatura centrale dell'organizzazione ecclesiastica. I ministeri sono inseparabili dall'*ordo*, il quale non deve essere concepito come un semplice insieme o *coetus* di persone, designate poi a ricoprire uffici o ministeri alieni all'*ordo*. L'*ordo episcoporum* è già per sé titolare di una missione e comprende collaboratori (l'*ordo presbyterorum*) e ausiliari (l'*ordo* dei diaconi)». *Ibid.*, p.188.

⁴⁵ “To achieve this purpose Christ, consecrated and sent by the Father, makes the Apostles and through them their successors, the bishops, sharers in his consecration and mission. This same consecration and mission are transmitted at a subordinate level to the presbyters who can then fulfill this mission from Jesus Christ as co-workers of the Order of bishops.” A. DEL PORTILLO, **On Priesthood**, *cit.*, p.21.

together with the deaconal ordination, incardination⁴⁶ also arises, an institution that usually determines the place in which the cleric will exercise his ministry.⁴⁷ There is no cleric who doesn't act in communion with the other ordained persons, in particular with his Bishop, the presbyterate and other clerics of his particular Church.

If we keep in mind the substantial elements of the cleric's identity that we just mentioned, an analysis of the norms that correspond to the juridical state as it has been formalized in the current Code, we necessarily come to the conclusion that they principally seek to *reflect and canonically safeguard the priestly identity: a man configured with Christ, consecrated to God.*⁴⁸ At the

⁴⁶ Cf. can. 266, §§1-2.

⁴⁷In certain cases the cleric fulfills his ministry at the service of other ecclesiastical circumscription: one thinks of the frequent case of priests that pastorally work outside of their own diocese: in other dioceses where there is a scarcity of clergy, in Military dioceses, in service to emigrants from his own country, etc. Regarding some of these phenomena, cf. P. PAVANELLO, *I presbiteri "fidei donum" speciale manifestazione della comunione delle Chiese particolari tra loro e con la Chiesa universale*, in *Quaderni di diritto ecclesiale*, 9 (1996), p.35-57; and J. GARCÍA MARTÍN, *La encíclica "Fidei donum" de Pio XII y la dimensión universal del servicio del presbítero secular*, in *Commentarium pro religiosis*, 79 (1998), pp.35-71.

⁴⁸ "The ontological configuration with Christ which sacramental consecration entails, as well as the sacred mission to which clerics are destined, is the reason of their existence, the true foundation of the specific status of clerics established in the present chapter. An attempt has been made on the one hand to harmonize the life of clerics (that is, their personal behavior) with the sacred nature of their ministry; while on the other hand to safeguard the priestly identity, in the face of possible attempts at secularization" T. RINCÓN, *Commentary to title III, Sacred ministers or Clerics*, in *Exegetical Commentary on the Code of Canon Law, Vol.II/1*, Montreal-Chicago (2004), p.207. Lombardía also underlined the relationship between the juridical state and the functions of the cleric: "*los ministros sagrados, sin embargo, tienen una peculiar condición en el ordenamiento de la Iglesia. Entre sus fundamentos hay que aludir, en primer lugar, a su destino sacramental al desempeño de funciones sagradas -relacionadas con la proclamación y explicación oficial de la Palabra de Dios y la confección y administración de los sacramentos-, que postula de ellos un modo de vida congruente con la santidad de tales funciones.*" P. LOMBARDÍA, *Sacerdocio*, in IDEM, *Escritos de Derecho canónico y de Derecho Eclesiástico del Estado, Vol. IV*, Pamplona (1991), p.48. In his part, Valdrini rightly affirms that the unifying criterion for all the norms relative to clerics is that such dispositions *sont voulus comme expression et garantie de la*

The Ban on Priests from Active Participation in Political Parties and Assumption of Public Office
same time, the precise purpose of those norms will be to help *the sacred ministers to more adequately exercise their ministry, and accomplish the mission they have received from God* in the framework of the communion that is proper to the Church⁴⁹.

To reflect in a juridical way the identity of the clergy and to favor the accomplishment of their mission are tasks of notable difficulty, since the substantial realities go beyond what are specified in juridical norms. How can the ecclesiological, spiritual, and moral richness of the priestly ministry be configured in a juridical manner? Those difficulties are manifested in the great variety of the norms: aside from the true and proper rights of the clerics there are also duties (some of them of juridic nature and others of a moral nature), exhortations and recommendations, and lastly prohibitions.

That diversity in the configuration of the contents of the discipline and life of the clergy comes from the fact that these norms, according to a long tradition—completed with doctrinal and theological developments by the Magisterium over the last century—, seek to outline the juridic framework of the life of these faithful and to specify *some aspects* (not all), which are proper or at least adequate for their life. In this way Canon Law contributes to show an image of the cleric, which will be always limited by the awareness that many aspects of that identity are not realized in juridic rights and duties. Therefore we find exhortations, recommendations, etc. Furthermore, the Church is aware that if some activities and functions were to be exercised by the clergy they would constitute a deviation from their proper mission and would create an obstacle to letting Him whom they represent shine through. It is then understandable that a set of prescriptions have been born throughout history, according to which some functions, activities and behaviors are *alien* to the clerical state, or are at least not *adequate* to the lifestyle of the cleric. The CIC of 1983, on the trail of the

spécificité du ministère sacré dans l'Église. Cette affirmation est capitale. P. VALDRINI, *Les ministres sacrés ou les clercs*, in *L'Année canonique*, 30 (1987), p.322.

⁴⁹ Since the cleric is sacramentally destined to fulfill certain functions at the service of the Church, the canonical norms regarding the juridical condition of these faithful includes some dispositions intended to render the cleric more fully available, open, and prepared to fulfill his ministerial service. Cf. cann. 274, 283, 279.

Code of 1917, states *two general principles*: 1) “Clerics must abstain from everything that is not suitable to their proper state” (c.285, §1)⁵⁰; 2) “they must avoid what, even if not indecorous, is alien to the clerical state” (c.285, §2). The same Code then indicates that some activities are alien to or inconsistent with the clerical state. Precisely among these are those pertinent to the participation of the clergy in politics and the assumption of public office in civil society.

Also, we need to specify that these prohibitions do not concern only the instances wherein the cleric performs his ministry, because the juridic state of the cleric is a permanent juridic condition. The cleric is always a *sacred minister*, a *minister of the Church*, who necessarily exercises a special role of representation that goes beyond the limits of the Church and has an impact in society. In fact his actions, including his private actions, involve the Church, at least from the sociological point of view and this is reflected in public opinion, as has been the case regarding some recent criminal behaviors. Since the cleric is a *sacred minister*, it is logical that *everything* in his life must not only be not contrary to the character received at ordination, but must also favor his function and mission in the Church: to bring souls close to God, to be an instrument of the divine action in souls.

4.- The Church and political action

The authors who have written on the topic after the promulgation of the CIC of 1983 have not hesitated to relate the strong words of John Paul II on the presence of the clergy and religious in the political and public life of civil society.⁵¹ In one of his first speeches as Roman Pontiff, in January 1979 he said: “You are spiritual leaders who must concern yourselves with leading the hearts of the faithful; convert and live the love of God and for your neighbor and work for the promotion of the dignity of man. You are priests and religious; you are

⁵⁰ What is unbecoming of the clerical state is to be determined by particular law in a concrete way.

⁵¹ Cf. J. HERRANZ, *Adnotationes*, in *Apollinaris*, 57 (1984), pp.514-515; A. PIAMONTE, *Involvement of clerics in politics and public administration*, in *Boletín eclesíastico de Filipinas*, 62 (1986), pp.526-527; J. ACHACOSO, *The Participation of Priests in Politics*, in *Philippine Canonical Forum* (2005), p.231.

The Ban on Priests from Active Participation in Political Parties and Assumption of Public Office not social or political leaders or officials of temporal power. For this reason I repeat to you: "Let us not be under the illusion that we are serving the Gospel if we 'dilute' our charism through an exaggerated interest in the wide field of temporal problems (Address to the Clergy of Rome). Do not forget that temporal power can easily be a source of division, while the priest must be a sign and agent of unity and brotherhood. Secular functions are the specific field of action of the laity, who has the task of improving temporal matters with the Christian spirit (**Apostolicam Actuositatem**, 4)." 52

In this statement, repeated almost verbatim by the Roman Pontiff in other discourses⁵³, are some elements that justify the prohibitions in canons 285 and 287. In them are pointed out both the specific role of the clerics as guides and instruments of unity in the ecclesiastical community and the specific nature of the functions of the laity in these spheres. This distinction of roles is clear in the words of the **Catechism of the Catholic Church**: "It is not the role of the Pastors of the Church to intervene directly in the political structuring and organization of social life. This task is part of the vocation of the *lay faithful*, acting on their own initiative with their fellow citizens."⁵⁴

In order to clarify the right kind of intervention in the public and political sphere, we need to distinguish accurately between: a) the official and public action of the Church, b) that of the Pastors as ministers of the Church, c) that of

⁵² JOHN PAUL II, *Discourse to diocesan and religious priests*, Mexico, 27.I.1979. Original text in Spanish, at www.vatican.va/holy_father/john_paul_ii/speeches/1979/january/documents/hf_jp-ii_spe_19790127_messico-guadalupe-sac-relig_sp.html.

⁵³ "Leave political responsibilities to those who are charged with them. You have another part, a magnificent part; you are 'leaders' by another right and another manner, participating in the priesthood of Christ, as his ministers. Your sphere of interventions, and it is vast, is that of faith and morals, where it is expected that you preach at the same time by a courageous word and the example of your life". JOHN PAUL II, *Address to priests*, Kinshasa, 4.V.1980, in **Origins**, 19 (22.V.1980), p.11. Also at http://www.vatican.va/holy_father/john_paul_ii/speeches/1980/may/documents/hf_jp-ii_spe_19800504_sacerdoti-zaire_it.html.

⁵⁴ **The Catechism of the Catholic Church**, n.2442.

the clergy as citizens and finally d) that of the laity.

The Church as such is different from civil society, even if both are at the service of man.⁵⁵ The Church's own duty is to announce the Gospel. That involves also the obligation to give moral judgments on temporal matters. That the Episcopal Conferences or individual Bishops intervene, indicating the morality of certain temporal options, constitutes a function of the Pastors. As the Second Vatican Council indicated, "It is right, however, that at all times and in all places, the Church should have true freedom to preach the faith, to teach her social doctrine, to exercise her role freely among men, and also to pass moral judgment in those matters which regard public order when the fundamental rights of a person or the salvation of souls require it. In this, she should make use of all the means—but only those—which accord with the Gospel and which correspond to the common good according to the diversity the times and circumstances" (Const. **Gaudium et spes**, n.76).⁵⁶

Some would like to reduce the Church to silence and every time that the Church denounce injustice, the violation of human rights, attempts against the dignity of the person, they cry out that it is an interference in the internal affairs of the State. One immediately thinks of the reactions against the interventions of the Bishops in moral matters (abortion, divorce, homosexual marriages, stem cell research, etc.) or those regarding social justice. The preaching of the Gospel necessarily has a strong impact on social and personal life. It requires a deep transformation to the evangelical values. It impacts therefore on the common good, a typical aspect of politics. These teachings will be brought about by licit means, both in writing and verbally. It is normal that the Episcopal Conferences publish documents of pastoral nature to guide the faithful in current matters relevant to their country.⁵⁷ On their part, the priests can and must also explain

⁵⁵ "The Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men". SECOND VATICAN COUNCIL, Const. **Gaudium et Spes**, 76.

⁵⁶ This refers to the means adequate to the mission of the Church, intending that also in the cases in which the clerics intervene in the legitimate questions of the public life, they do so by way of peaceful means.

⁵⁷ Cfr. For example see the following documents: CONFERENCIA EPISCOPAL DEL VENEZUELA,

The Ban on Priests from Active Participation in Political Parties and Assumption of Public Office in their homilies and in other means of preaching the requirements of the Gospel in their integrity.

If the Pastors remain faithful to their duty then they will make possible it for the lay faithful to perform their role in the civil community. They are the ones who will freely exercise their rights, guided by a well formed moral conscience, without involving the Church, because they act in their own name.

Besides these fields involving the exercise of the *munus docendi* (an activity specifically official and public of the Church), *the cleric's personal actions* in the exercise of his civil and political rights, belong to the realm of the autonomy proper to the faithful. In fact, even clerics are entitled to the right of temporal freedom in those areas that are not limited by their function in the Church.⁵⁸ In this respect, the clerics have the right to make their own choices in political matters guided by their conscience (for example, they freely decide to which candidate they will give their vote during political and administrative elections or in a referendum), and to prudently comment about them with others should they desire to do so.

On the contrary, it would not be prudent, and it could even constitute a violation of the right to freedom of the faithful in secular affairs (see c.227), to openly campaign for some candidates or the candidate of his choosing.⁵⁹ In

Exhortación del Episcopado Venezolano sobre la propuesta de la reforma Constitucional, 19.X.2007, at www.cev.org.ve; CONFERENCIA EPISCOPAL ESPAÑOLA, *Orientaciones morales ante la situación actual de España*, 23.XI.2006; IDEM, *Algunas orientaciones sobre la ilicitud de la reproducción humana artificial y sobre las prácticas injustas autorizadas por la Ley que la regulará en España*, 30.III.2006, at www.conferenciaepiscopal.es; CONFERENZA EPISCOPALE ITALIANA, CONSIGLIO EPISCOPALE PERMANENTE, *Nota a riguardo della famiglia fondata sul matrimonio e di iniziative legislative in materia di unioni di fatto*, 28.3.2007, at www.chiesacattolica.it.

⁵⁸ On this right, vid. J. HERVADA, *Diritto costituzionale canonico*, pp.129-131; J.T. MARTÍN DE AGAR, *Il diritto alla libertà nell'ambito temporale*, in *Lex Nova*, 1 (1991), pp.125-164; and M. BLANCO, *La libertad de los fieles en lo temporal*, in *Fidelium iura*, 3 (1993), pp.13-35.

⁵⁹ "It should be added that the presbyter's right to express his own personal choices is limited by the requirements of his priestly ministry... In fact, he can sometimes be obliged to abstain from exercising his own right so that he can be a strong sign of unity, and thus proclaim the Gospel in its fullness. Even more, he must avoid presenting his own choice as

those cases the lay faithful remain entirely free and they are not bound, not even morally, to the choices of the clerics.⁶⁰ To go beyond the private manifestation of the personal choices of the cleric in politics, participating actively in politics (as for example becoming a candidate in municipal elections) or assuming public office (being mayor or member of parliament, etc.), or participating in popular revolts, except for exceptional cases, would constitute an obstacle to his pastoral function, because it would provoke divisions in his community. If John Paul II warns the cleric to be prudent in the way in which he expresses his political choices as a private citizen (“He will do what is possible to avoid making enemies by taking political stands that cause distrust and drive away the faithful entrusted to his pastoral mission”)⁶¹, how much more careful he should be to avoid public action in a strictly political sphere, because those actions or taking sides will surely bring a profound division in the Christian community.

5.- The application of prohibitions and their exceptions

After having analyzed the foundation of these prohibitions, it is appropriate to tackle some of the questions regarding the application of the stated norm: both with regards to the prohibitions as well as the necessary authorizations and dispensations by the ecclesiastical authority.

It has been rightly observed that the application of this regulation depends greatly on the discretion of the ecclesiastical authority. An Italian author, after

the only legitimate one, and within the Christian community, he should respect the maturity of the laity, and even work to help them achieve that maturity by forming their consciences.” JOHN PAUL II, *General Audience*, 28.VII.1993, n.4.

⁶⁰ I agree with the affirmations of Achacoso: “Even as they are entitled to lay down moral guidelines regarding elections, bishops and other members of the clergy have no special competence to indicate the best persons to vote for. Much less can they oblige the faithful to vote for a certain candidate. Specific indications regarding the aptness of certain candidates for public office, given by particular members of the clergy, must be taken as expressions of opinion. The credence given to such opinions should be based not on their Church position or authority but rather on their perceived reliability in assessing the competence and character of persons. In the matter of choosing candidates, lay people should know that they enjoy and should exercise their Christian freedom”. J. ACHACOSO, *The Participation of Priests in Politics*, *cit.*, p.234.

⁶¹ JOHN PAUL II, *General Audience*, 28.VII.1993, n.4.

The Ban on Priests from Active Participation in Political Parties and Assumption of Public Office having examined some cases of direct intervention of some clerics in these spheres, and having pointed out the type of reaction elicited on the part of the ecclesiastical authority, concludes that “for each step of the procedure we find an absolutely discretionary choice of the ecclesiastical authority. Discretion is the judgment on whether or not it is appropriate to consent for the cleric to take active part in politics and in trade unions; intervention in case of violations is also discretionary; the faculty to place on him a formal *monitum*, after which the violation may be transformed into a crime, is discretionary; the choice between the administrative procedure or judicial process is discretionary, the nature and the measure of the sanction is discretionary.”⁶² These annotations are particularly relevant if we keep in mind that the violation of the prohibitions in canons 285 and 287 are not crimes and therefore they are not subject to penal sanctions, as long as there is no penal precept calling him to obedience.⁶³

This may bring us to the conclusion that *everything* depends on the social and political circumstances, on the competent authority, on the cleric himself who wants to intervene and also on the circumstances in which one finds the Church in that Nation. That is substantially true, but that does not mean that decisions are arbitrary, because discretion is not arbitrariness. Therefore the current regulation foresees that a dispensation from can. 285, §3 could be granted by the ecclesiastical authority (which requires just and reasonable cause. See can.

⁶² L.M. DE BERNARDIS, *Il clero e la politica tra il Codex del 1917 e quello del 1983*, cit. p.460.

⁶³ A letter of Card. Re to Msgr. Lugo Méndez, of 20.12.2006 explicitly indicated that the letter constituted the warning referred to in can. 1347: “*Ahora, según el can. 1347, §1, le hago esta pública admonición canónica de no aceptar la candidatura a Presidente della República del Paraguay. En caso contrario le será impuesta -como primera sanción- la pena canónica de suspensión, que prohíbe a los ministros sagrados todo acto de potestad de orden y de jurisdicción (cfr. can. 1333, § 1)*”. G. B. RE, *Admonición canónica a S.E. Mons. Fernando Lugo Méndez, S.V.D., Obispo emérito de San Pedro (Paraguay)*, 20.12.2006, at www.episcopal.org.py/comunicados/admonicionalugo.htm. In some cases the judicial process had been followed and concluded with a sentence, as in the case of Baget Bozzo. See A. VITALE, *Ministri di culto e impegno politico. In margine alla sentenza di Baget Bozzo*, in *Quaderni di diritto e politica ecclesiastica* (1985), pp.49-52. For the decision of the Metropolitan Tribunal of Genoa, 29.VII.1985, see *Quaderni di diritto e politica ecclesiastica*, (1985), pp.388-395.

87 and can. 90, §1) or that the cleric could be allowed to act in the sphere of the prohibition of can. 287, §2. What is clearly excluded is that the cleric himself would act on his own accord without these prior actions of the authorities: *one's own judgment is not enough*.⁶⁴

Various factors affect the decisions taken by the authorities—~~are various~~: some involve the objective circumstances which require the defense of the Church's rights or the promotion of the common good. Others instead refer to the characteristics of the cleric who desires to intervene in politics or to occupy a public office: it is not the same if a bishop, a priest or a deacon would want to intervene into politics. Also the same authority must evaluate the impact that such action may have both on the Christian community and the civil society in general. Further, it must also evaluate if the lay faithful are able to intervene and take on this position or to take an active part in political parties and trade unions.

With regard to *Bishops*, direct intervention in politics or taking public positions requires, in the current praxis, the authorization of the Holy See. However, before the Bishop decides to intervene in these ways, it would always be appropriate for the Bishops of the Nation to consult among themselves. In fact questions of political and social nature may have repercussions on the functions of the Episcopal Conference. A manifestation of the communion among bishops would be that each of them try to avoid causing damage to others due to his choices and decisions. One thinks for example of the request by the government authorities for a bishop to participate as a member of a commission with an advisory capacity on matters of social nature, as a member of an inquiry with decision taking powers, etc.⁶⁵ In this case a certain unity among Bishops is

⁶⁴ To ask authorization constitutes “a basic measure of prudence, intended to avoid dangerous temptations that could easily take shape in the heat of political passion”. J. OTADUY, *Commentary on can. 287*, cit. p.387.

⁶⁵ This is what happened in the Philippines, where the presence of two bishops in two commissions resulted in strong reactions of public opinion and divisions in the Church: the bishop of Butuan, Bishop. Juan de Dios Pueblos was nominated by President Arroyo in August of 2006 as a member of the “Melo Commission”, entrusted with the task of investigating the deaths of activists and journalists. The “Bastes Commission”, presided over by Bishop Bastes,

The Ban on Priests from Active Participation in Political Parties and Assumption of Public Office necessary, respecting the power of every individual bishop. Otherwise great consternation may be produced among the faithful.⁶⁶

In the case of *priests and deacons*, before the silence of the canonical norm, but taking the lead from what is indicated by the Synod of Bishops of 1971, given the repercussions of the cleric's activities in these matters, it seems truly appropriate that before authorizing the cleric for these activities the presbyteral council of the diocese and the Episcopal Conference must be consulted.⁶⁷ That can contribute to having a more uniform behavior of the Church in a nation. If it

Bishop of Sorsogon, was called to give his technical opinion on the impact of the exploitations of some mines in that country. The first was given decisional power, the second, had only a consultative role. For a description of the finality and powers of the commissions, cf. O. CRUZ, *Two Malacañang commissions*, 29.8.2006, at www.ovc.blogspot.com/2006/08/two-malacaang-commissions.html. Also in Nicaragua, following the invitation of president D. Ortega, Cardinal Obando, the retired bishop of Managua, became President of *Consejo Nacional de Reconciliación y Paz*, an organism created by the Nicaraguan government to follow the application of the Peace Accords. The Episcopal Conference issued a communication in which they underlined that "*comprendemos que esta comisión no implica relación jerárquica de subordinación con el Poder Ejecutivo ni de manejo de fondos públicos o partidas presupuestarias*", at www.terra.net/noticias/articulo/htm/act776438.htm.

⁶⁶ "For today, this Episcopal identity is not clear to our people. Bishops do not present a homogeneous, clearly identifiable character of who they are to our people. They read of dissent among bishops; they listen to statements of bishops which they consider as highly political while noting the silence of other bishops; they see bishops with different preferential options, some for the rich and powerful others for the poor and powerless. They wonder why those bishops engaged in lonely battles against moral corruption seem to be without support of other bishops. They know that bishops have different views on whether or not ask for the resignation of the President. They hear of bishops telling media that they miss the high profile interventions of cardinal Sin in political issues. Have bishops, then, become part of the problem and thereby bring about confusion and demoralization among our people?". L.B. LEGASPI, *Reflections on the Role of Bishops in Philippine Politics*, in *Boletín eclesiástico de Filipinas*, **81** (2005), p.860.

⁶⁷ "Leadership or active militancy on behalf of any political party is to be excluded by every priest unless, in concrete and exceptional circumstances, this is truly required by the good of the community, and receives the consent of the bishop after consultation with the presbyteral council and, if circumstances call for it, with the Episcopal Conference". SYNOD OF BISHOPS, *Ministerial priesthood*, 30.XI.1971, part II, I, 2, in A. Flannery (ed.), *Vatican II, More Postconciliar Documents*, Michigan (1982), **Vol. II**, p.685.

is in regard to taking public positions, it would be logical that not only the cleric's Bishop would give the dispensation, but that before he grants it he should confer with the Bishops of the dioceses where the actions of the future public official will impact (the incidence is different for a mayor, or senator, member of parliament or governor, etc.).

Even if every country is different and therefore the regulations leave room for precautionary evaluations that take into account the particularities of each case⁶⁸, it is possible to observe a tendency in the Church—i.e., the evolution of the world (where notwithstanding social difficulties, there is a progressive maturity of democratic institutions), and also the development of the Church in many countries (that reflects a deeper Christian formation of the lay faithful) goes in the following direction: the priests do not have to take active part in party politics. At least this is deducible by some interventions of the ecclesiastical authority.⁶⁹ In fact, in developed countries it seems that there are no situations that make it necessary for the cleric to intervene in that way.⁷⁰ In developing

⁶⁸ “Whether an ‘active role’ in a political party would even include holding party membership probably depends on local political circumstances. For example, in certain parts of Africa the very fact of belonging to a political party is itself to take an active role in politics. The bishops there have already told the clergy not to even enroll in a political party. In the United States, however, registering according to one political party or another does not make one a party activist and constitutes only a ‘passive voice’ rather than an active role”. J. PROVOST, *Priests and Religious in Political Office in the U.S.: A Canonical Perspective*, cit., p.87.

⁶⁹ In the letter of Card. Re to Msgr. Lugo Méndez, he explained that there are no situations for the exception to the disposition of can. 287: “*Paraguay de hecho es una nación libre y democrática y la Iglesia—cuyos derechos se respetan—está presente con un laicado comprometido, serio y motivado, capaz de asumir las propias responsabilidades en cada sector social, incluido el de la política. La candidatura política de un Obispo sería un motivo de confusión y de división entre los fieles, una ofensa al laicado y una “clericalización” de la misión específica de los laicos y de la misma vida política*”. G.B. RE, *Letter to Msgr. Lugo Méndez*, 4.1.2007, at www.episcopal.org.py.

⁷⁰ This was recognized in the issued communication of the diocese of Joliette: “In the present case, it is not the political situation of our country that justifies a derogation from the general norm as defined by the law of the Church”. DIOCESE OF JOLIETTE, *Communiqué. Rev. Raymond Gravel and Politics. Clarification by Most reverend Gilles Lussier, Bishop of Joliette*,

The Ban on Priests from Active Participation in Political Parties and Assumption of Public Office countries there are also cases wherein the local Hierarchy asks their priests not to get involved in those functions.

An interesting example of this attitude is found in a recent pastoral letter of the Episcopal Conference of Kenya ("*A Pastoral Letter to our Priests*") where the following points are established:

1) It is not permitted for a Catholic priest to stand as a Member of Parliament or any public office whenever it means sharing in the exercise of civil power (c.285, §3).

2) Priests are not permitted to accept positions on State or Corporation Boards (c.285, §2). If a chaplain is considered necessary, permission must be sought in writing from the local Bishop by those inviting the priest to accept the position.

3) In the area of party politics, priest should not take sides, as it will divide the local community. The priest is a symbol and builder of unity. Canvassing or even urging people to vote for particular candidates or parties, leads to confusion and division. It is, however, accepted that each priest can exercise his democratic right to vote according to his conscience.

4) In order to avoid misunderstanding, priests should not serve in structures such as the Constituency Development Fund, without the permission of the local bishop (c.285, §4). Each Diocese has a Justice and Peace Commission which can assist in such structures—thus affirming the laity to exercise their commitment, in the name of the gospel, to promoting justice, peace and reconciliation.

5) As regards commerce and trade, we remind you that 'clerics are forbidden to practice commerce or trade, either personally or through another, for their own or another's benefit, except with the permission of the lawful ecclesiastical authority' (c.286).⁷¹

These types of interventions by episcopal Conferences shows that the

31.10.2006, at www.diocesedejoliette.org.

⁷¹ KENYA EPISCOPAL CONFERENCE, *A Pastoral Letter to our Priests*, December 15, 2006.

application of the universal norm leaves room both for the intervention of the ecclesiastical authority nearest to the actual problem and the particular legislation on the matter. Thus, in the Second Plenary Council of the Philippines, celebrated in 1991, it is directed that “Bishops, priests and religious must refrain from partisan politics, avoiding especially the use of the pulpit for partisan purposes, so as to avoid division among the flock.”⁷² Another example of this characteristic is that in some countries, in accordance with the clause of can. 288, that allows the particular legislation to prescribe otherwise, it is foreseen that permanent deacons are subject to these prohibitions.⁷³

Furthermore, before conceding the necessary dispensation or authorization one must carefully evaluate the fact that the *clerics* are not formed to become politicians or civil government experts. They do not have the adequate *training*. These words of John Paul II remind us precisely that good will is not enough to take public office, to be members of a technical commission, and to do it well. These tasks require technical and professional formation that the cleric does not possess.

“The Church reminds priests, who in their generous service to the Gospel ideal feel drawn to political involvement in order to help more effectively in reforming political life and in eliminating injustices, exploitation, and every type of oppression, that on this road it is easy to be caught up in partisan strife, with the risk of helping not to bring about the more just world for which they long, but new and worse ways of exploiting poor people. In any case they must know that they have neither the mission nor the charism from above for this political

⁷² PLENARY COUNCIL OF THE PHILIPPINES-II, **Acts and Decrees**, Manila (1992), Decrees, Art. 28, #2, p.242. First the same plenary council indicated: “That pastors have competence in the moral principles governing politics and that laity have competence in active and direct, partisan politics is a good rule of thumb to follow”. PLENARY COUNCIL OF THE PHILIPPINES-II, **Acts and Decrees**, Manila (1992), Conciliar document, n.342, p.117.

⁷³ From the sources that I possess, only the Episcopal Conferences of Gambia, Liberia, and Sierra Leone have decided to not exonerate the deacons from the obligations sited in can. 288. In this norm of particular law it is explicitly established that “permanent deacons are bound by the provisions of Canon 284, 285 §§ 3 e 4, 286 and 287 § 2”. Quoted by J.T. MARTÍN DE AGAR, **Legislazione delle Conferenze episcopali complementare al CIC**, Milano (1990), p.287.

The Ban on Priests from Active Participation in Political Parties and Assumption of Public Office involvement and activism.”⁷⁴

Finally, in cases wherein the cleric is given permission to actively participate in the political life or take a position which includes civil power, usually that priest is *separated from active ministry*.⁷⁵ That decision, as it was said in one case where a cleric was allowed to intervene in politics, has the purpose of avoiding confusion among the faithful and between politics and religion. However, the doubt always remains if that confusion among the faithful will not remain because that candidate or that Member of Parliament or that public official will always remain a cleric, and whether or not he intends it, his activity will always involve the Church.

For that reason the means he will adopt in the electoral campaign or in performing the functions of the position received must always be in consonance with the Church, and therefore never violent: he can never be involved in verbal or physical violence, he cannot join violent protests, promote lynching opponents, etc.⁷⁶

In conclusion, I would like to cite the words of John Paul II, because they summarize the balance that must characterize the cleric in this normative area.

⁷⁴ JOHN PAUL II, *General Audience*, 28.VII.1993, n.5.

⁷⁵ "In choosing to become actively involved in a political party, Father Gravel retains his clerical state but is relieved from the exercise of his priestly ministry. He cannot undertake any priestly activity during such time as he is involved in politics. This measure is to avoid confusion among the faithful and to preserve the distinction between politics and religion. In any case, renouncing the exercise of the priestly ministry always represents a painful situation for the Church". DIOCESE OF JOLIETTE, *Communiqué. Rev. Raymond Gravel and Politics. Clarification by Most reverend Gilles Lussier, Bishop of Joliette*, 31.X.2006.

⁷⁶ "Because their acts have the Gospel of Jesus Christ for their source and inspiration, then it follows that the language of Bishops should be marked by civility, charity, understanding, compassion and forgiveness. Their utterance do not demonize political opponent; their words do no close the door to reconciliation and conversion. The sarcastic phrase, the sharp retort, the ridicule of person –this is an idiom that must not be heard from the mouth and heart of bishops. From the depths of the gospel there can only rise words that give peace and unity, sentiments that lead to compassion and understanding. This is the only form of rhetoric that fits the vocation and apostolate of bishops". L. B. LEGASPI, *Reflections on the Role of Bishops in Philippine Politics*, cit., p.866.

“Therefore, I pray and invite you to pray that priests may have ever greater faith in their own pastoral mission for the good of the society in which they live. May they recognize its importance in our age too and understand this statement of the 1971 Synod of Bishops: "The priority of the specific mission which pervades the entire priestly existence must therefore always be kept in mind so that with great confidence, and having a renewed experience of the things of God, priests may be able to announce these things effectively and joyfully to the people who await them.”⁷⁷

⁷⁷ JOHN PAUL II, *General Audience*, 28.VII.1993, n.5.