Qui sine praescripta licentia bona ecclesiastica alienat, iusta poena puniatur.

A person who, without the prescribed permission, alienates ecclesiastical goods is to be punished with a just penalty.

SOURCES: c. 2347
CROSS REFERENCES: cc. 638 § 3, 1291, 1321 § 2, 1389 § 1

COMMENTARY
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1. In certain cases, alienation of ecclesiastical goods requires prior permission from the proper authority (cf. 1291, 1292, 638). Alienation carried out without the required permission is invalid under cc. 1291 and 638. It incurs the financial responsibilities for the act (cf. cc. 639, 1281 § 3, 1296) and may constitute an offense under c. 1377.

For an act of alienation of a certain relevance that seeks to preserve the stability of the patrimony of the public juridical persons who compose it, permission assumes that there is an act performed by the authority. The fact that a penal norm punishes the failure to observe this precaution is explained by the fact that the canonical invalidity of alienation is not always recognized in civil law, thus making the harm greater.

The act in this offense is the alienation of ecclesiastical goods without the required permission, which makes the act invalid. Therefore, the following are required for the offense:

a) There must be alienation, that is, an act by which permanently or, at least for a long time, the free use and enjoyment of the goods is lost. It is not always easy to determine whether there has been alienation, but some transactions clearly fall outside the penal category, such as those that are not offenses but are subject to the same precautions as alienation under c. 1295, although they may be invalid due to failure to obtain permission.

b) The act of alienation must require permission under the law (cc. 1291, 638 § 3). The offense is not incurred through failure to comply with other legal or statutory requirements, such as those established in

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1. Regarding those affairs that bring about alienation, see commentary on c. 1295.
cc. 638 § 4 and 1293, unless the person giving permission places any of those conditions upon it. Then, if they are not fulfilled, there was no permission granted. On the other hand, the typical form of the offense exists when the permission required by law is not obtained, even if other conditions are met (cf. cc. 1292 § 2, 638 § 3).

3. The alienated goods must be ecclesiastical; they must belong to a public juridical person (for the concept of "ecclesiastical goods," see commentary on c. 1257), the penal law in c. 1377 does not protect the goods of private persons, even when they are designated for ecclesiastical purposes, and their alienation could be invalid for lack of the permission required in certain cases by statutory law.

For there to be an offense, beside the fact that the acts must fall under the legal type in question, the general requirement for punishability must also be met (cc. 1321ff).

An offense is consummated when the act of alienation is perfected in its typical juridical elements, even though the act is null and void for failure to meet the legal requirement of permission, which is prior and external to the transaction. Under c. 1321 § 2, acts that constitute an offense must be performed with malice; simple negligence will not constitute this offense, but it could be sanctioned under c. 1389 § 2.

2. Canon 1377 prescribes that the offense is to be punished, but it does not state the specific penalty to be imposed. Considering that this is a specific abuse of a public function, the penalty could be deprivation of office, under c. 1389 § 1. In any case, to determine the penalty, the consequences of the offense, foreseen or foreseeable by the offender, must be taken into consideration. In addition, the offense can be cumulative with other civil or ecclesiastical offenses, depending upon the circumstances in which it is committed.

3. Calabrese, dealing with this offense, includes sacred goods among ecclesiastical goods, which does not seem exact (ibid., p. 226).

4. F. Aznar, discussing this canon, considers that the form of the offense includes "the deceitful or culpable omission of the corresponding license" commentary on c. 1377, in Salamanca Com.