



CODICIS IURIS CANONICI FONTES

CURA ET STUDIO
EM̄I IUSTINIANI CARD. SERÉDI
EDITI

VOLUMEN VII.
CURIA ROMANA

S. C. DE PROP. FIDE - S. C. INDULG.
S. C. INDICIS - S. R. C. - A. 1588-1790

N. 4428-5822



TYPIS POLYLOTTIS VATICANIS

MCMXXV

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Ad Vic. Ap. Cochinchin; S.C. de Prop. Fide, instr.; 26 August 1775
Fontes VII, p. 101

1. *Dub. An Constitutio Benedicti XIV adversus sollicitantes obliget etiam missionarios franciscanos, qui ministerium exercent in Cocincina.*

2. *Dub. An eadem Constitutio restringi possit, ac moderari in aliquo casu in eodem Regno Cocincinae.*

Constitutio novissima Benedicti XVI cuius initium est *Sacramentum Poenitentiae*, aequae ac ceterae a pluribus Pontificibus editae adversus sacerdotes ad turpia sollicitantes in actu sacramentalis Confessionis, vel euis occasione et praetextu, et prout praescribitur in issdem Constitutionibus, afficit absolute, et absque ulla limitatione omnes confessarios etiam cuiscumque Ordinis et Instituti, in quibuscumque orbis partibus huiusmodi facinora perpetrantes. Hinc est quod ad dubia per te proposita, Sanctias Sua, re mature perpensa, ad primum affirmative, ad secundum negative respondit.

Verum cum non ubique datum sit in huiusmodi delicti prosecutione ea omnia deducere ad praxim, quae ex eisdem Apostolicis Constitutionibus, et tribunalium instituts sancita sunt, hinc est quod Sanctitas Sua, pro sua eximia sapientia, mandavit ut tibi aliqua praescribatur methodus, iuxta quam in re huiusmodi procedere possis, in quantum harum regionum circumstantiae tibi permittent, ad impediendum, saltem ex parte, ne tam immane facinus late serpat, neque altius radices agat in perniciem fidelium animarum tuar curae concreditarum, atque in maximum scandalum infidelium et detrimentum christianae religionis et fidei.

In primis tibi pro regula tendendum est, quod omnia iura vetant ne ad criminum punitionem deveniatur, nisi prius per probationes a lege prescriptas constet de delicti

perpetratione.

A lege statum est ut probationes huiusmodi habeantur tantum vel ex rei confessione, vel ex attestatione duorum saltem testium probae fidei, qui dicti vel facti, de quibus testimonium ferunt, una simul praesentes adfuisse nitide et absolut estenur.

Privilegium tamen est in causis quae instituntur de crimine sollicitationis, quod, ut plurimum, remotis arbitris secreto perpetratus, ut ad plenam probationem faciendam admittantur etiam attestations singulaes mulierum vel virorum de facto proprio deenuntiantium, dummodo tamen numerum trium personarum attingant. Huius denuntiationes tibi tamquam Superiori iurisdictionem habenti secreto deferri debent, neque a nemine omitti possunt absque culpa lethali.

Sed cum in summa difficultate itinerum in his regionibus, fere impossibile erit ut personae sollicitate ad tuam audientiam accedant, ut rite deferant suas denuntiationes, tunc tibi permissum erit delegar ad eas recipiendas, modo ut supra enuntiato, aliquem sacerdotem probate fidei, qui tamen non sit de ipsa sollicitatione vel suspectus vel denunciatus.

Acceptis per te, uno vel altero modo, denuntiationibus, quae semper esse debent iuramento firmatae, earum pondus, qualitates et circumstantias serio et accurate perpendas necesse est, et praesertim ullam curam non praetermittes ut tibi perspectum et exploratum evadat, quod mulieres vel viri denuntiates sint boni nomis, neque ad accusandum vel odio, vel inimicitia, vel alio humano affectu adducantur. Oportent enim ut testes huiusmodi singulares ab omnibus privatis affectionibus sint immunes, ut ipsis integra fides haberi possit.

Praemissis, his, et audito reo eo modo quo commode fieri poterit, si ex omnibus rite et accurate perpensis, tibi satis perspecta evadat admissi criminis veritas, tunc demum poteris devenire ad illit interdicendum in perpetuum ne confessiones excipiat, subtrahendo omnes et quascumque facultates in id muneris eidem, etiam per quodcumque privilegium, vel etiam ab ipsa S. Sede impertitas. Praeterea, declarare poteris eundem reum obnoxium esse ceteris poenis spiritualibus in Constitutioibus, et praesertim in Gregoriana sancitis. Tibi quoque fas erit illum suspendere a sacrosancti celebratione.

Cum vero difficillimum sane erit, in his tam dissitis et disparatis regionibus, haec omnia adamussin servare, et cum, si aliqua ex his omittantur, iustitia non patiatur ut poenae infligatur adversus reos de quorum crimine tali pacto adhuc sufficienter non constat, tunc consultius fortasse ages, si in huiusmodi causis extra iudicii ordinem procedas ad occurrendum tanto malo mediis et modis magis facilibus et expeditis, quos tibi suggeret in casibus particularibus tua perspecta prudentia cum animarum zelo coninucta, et cura quam debes habere praecipuam de conservanda pace et concordia inter operarios apostolicos, praesertim diversi Instituti et nationis.

[Collectanea S. C. De Prop. Fide, vol. I, n. 509].

Fontes Vol. VII., pp. 101-103. 4568: S.C. de Prop. Fide, instr. (ad. Vic. Ap. Cochinchin.)
26 aug., 1775

1. *There is a question whether the Constitution of Benedict XIV against solicitation is also binding to Franciscan missionaries who exercise their ministry in Cochinchina.*

2. *There is a question whether the Constitution can be restricted and moderated in any case in the same region of Cochinchina.*

The most recent Constitution of Benedict XIV, which begins *Sacramentum Poenitentiae*, applies just as the other Constitutions published by many Popes against priests making solicitations of sin within the act of sacramental Confession, either through its opportunity or pretext, and just as prescribed in these same Constitutions applies absolutely without limitation to all confessors, no matter what Order or Institute, and in whatever part of the world, who commit these sorts of crimes. Hence it is that His Holiness, after weighing the matter maturely, responds affirmatively to the first question and negatively to the second.

But since it is not possible to everywhere to put everything sanctioned in those same Apostolic Constitutions and stipulations of the tribunals into practice in the prosecution of a crime of this sort, His Holiness has ordered, in accordance with his extraordinary wisdom, that any method be prescribed to you – as much as you are able to proceed in this sort of case, to the degree circumstances of these regions allow you – toward preventing, at least in part, so enormous a crime from stealthily spreading widely, and to see that it does not drive its roots deeper toward the damnation of faithful souls entrusted to your care and toward the greatest scandal of men who are unfaithful, a detriment to the Christian religion and faith.

It is of the utmost importance that you remember in accordance with the regulations that all the laws forbid carrying out punishment of these crimes until the facts are known through the proofs prescribed by law concerning the perpetration of the crime.

By law it has been established that this proof is valid only through either confession of the deed or through the attestation of at least two witnesses of proven faith who give testimony through words or actions, and at the same time swear, absolutely and clearly, that they were present to witness the act.

There is allowance, nevertheless, in cases which are instituted concerning the crime of solicitation, since such cases are often committed in secret, away from witnesses. In these cases, sworn testimony of individual women and men who make accusations about a personal incident can be considered sufficient, as long as the total number of accusers is three people. Such accusers ought to be secretly deferred to you, as if you were of the rank of a Superior with jurisdiction. You cannot overlook such proof at all without committing a mortal sin.

But given the great difficulty of travel in these regions, it will be nearly impossible for all those who have been solicited [toward sinful acts] to achieve an audience with you. Therefore, they may transmit their denunciations in the proper manner, and you will be allowed, in the manner described above, to delegate any priest of proven faith (who nonetheless must not himself be suspect or accused of that same act of solicitation) to receive the allegations for you.

When accusations (which must always be affirmed by oath) have been received by you in one manner or another, you must weigh the seriousness of the accusations, and their nature and circumstances, and take special care not to overlook any detail until it

seems clear to you from what you have seen and inquired whether or not the accusing men and women are of good character or have been persuaded into accusation by hatred, enmity, or any human passion. Indeed, the individual witnesses must be free from all personal prejudices, so that complete confidence may be held in them.

When this is done, and the case has been heard in as expedient a way as it can, if, after everything has been duly and accurately considered, there seems to you sufficient evidence of a crime, then at last you will be able to sentence him [the guilty priest] with a permanent injunction against receiving confessions, by removing any and all faculties of the right of office pertaining to it, whether these faculties were imparted by any dispensation or even by the Holy See itself. Moreover, you will be able to declare the same defendant liable to the additional spiritual punishments in the Constitutions, especially those sanctioned in the Constitution of Gregory. You will also have the right to suspend him [the guilty priest] from celebration of the Holy Sacrifice. Since it will obviously be difficult, in such remote and disparate regions, to follow all these [instructions] to the letter, and since, if any of these are omitted, justice does not allow punishment to be inflicted against defendants of a crime of this magnitude for whom there is still insufficient proof, it would perhaps behoove you to consider the matter advisedly, whether in such cases you would do better to bear in mind that your role moves beyond that of a judge toward a resistor of such great evil, and your success depends more on moderate means than hasty and easy solutions. Your well-known prudence should suggest such means to you in particular cases, joined with the zeal for souls and the special care which you must have for preserving peace and concord between the apostolic laborers, especially those of different Institutes and nations.