

NOTES ON *IUS IN VIGILANDO*
(THE EXERCISE OF VIGILANCE) ACCORDING TO THE
CODEX CANONUM ECCLESARUM ORIENTALIUM (CCEO)

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Summary:

§1. *Ius in vigilando* according to the *CCEO*: a brief survey. §2. Some suggestions for a “general theory” concerning *ius in vigilando*

§1. *Ius in vigilando* according to the *CCEO*: a brief survey

Even a brief glance at the canons of the Code of Canons of the Oriental Churches (= *CCEO*)¹ will reveal some norms concerning the *ius in vigilando* (“right of vigilance”) as a special prerogative of the hierarchy. But in order to study this topic more in depth, it is necessary to look at ŽUŽEK’s *Index Analyticus*, where s.v. “*vigilantia*” we find all the canons related to this topic².

In my opinion, one of the most important canons of the *CCEO* is **can. 89§1**, which states that the Patriarch has the right and the duty to exercise vigilance over all clerics. This canon also allows the Patriarch the right to impose a penalty on a cleric when the hierarch to whom the cleric is subject does not do so. In short, the Patriarch can punish a cleric who merits a penalty if his own hierarch fails to inflict a punishment³. I think that it is possible to consider **can. 89§1** as the “foundation” of the principle of *ius in vigilando*.

In this regard, within that chapter of the *CCEO* dedicated to the rights and obligation of the Patriarchs, **can. 97** is very important. This canon, in fact, obliges the Patriarch to exercise vigilance over the proper

¹ *Codex Canonum Ecclesiarum Orientalium*, 1990 = *CCEO*.

² See ŽUŽEK I., *Index Analyticus Codicis Canonum Ecclesiarum Orientalium*, «Kanonika» 2, Roma 1992, 353. I must note that the word *vigilantia* and not *ius in vigilando* was used by IVAN ŽUŽEK.

³ *CCEO*, **can. 89§1**: «*Patriarchæ ius et obligatio est omnibus clericis ad normam iuris vigilandi; si quis penam mereri videtur, Hierarcham, cui clericus immediate subditus est, moneat et monitione in cassum facta in clericum ipse ad normam iuris procedat*».

administration of all ecclesiastical property⁴. Of course the primary obligation to exercise vigilance over all ecclesiastical goods is reserved (can. 1022§1) to the eparchial bishops⁵, but can. 97 nevertheless reserves to the Patriarch the special right and obligation mentioned above.

But as is well known, in accord with can. 152 of the *CCEO*⁶, what applies to Patriarchs is applicable to the Major Archbishops of the Major Archiepiscopal Churches. Thus a Major Archbishop has the same prerogatives for exercising vigilance as a Patriarch.

The *CCEO* also mentions the *ius in vigilando* for ecclesiastical authority in general, with regard to every association of *Christifideles* (can. 577)⁷ and the exercise of this duty is reserved especially to the eparchial bishop with regard to associations active in his territory. The same right is therefore reserved to the Metropolitan of a Patriarchal Church, (can. 133 n°4), who ensures that the faith and ecclesiastical discipline are observed⁸. Last but not least, an association administers its temporal goods belonging to itself in accord with canons 1007-1054 and the norms of its own statutes, under the vigilance of the authority who erected or approved the association (can. 582)⁹.

With regard to temporal goods in general (can. 1028§2 n°1)¹⁰, each administrator must be vigilant that none of the ecclesiastical goods entrusted to his care is damaged or lost; clearly this is a corollary of the general principle

⁴ *CCEO*, can. 97: «*Patriarcha diligenter vigilare debet rectæ administrationi omnium bonorum ecclesiasticorum firma primaria singulorum Episcoporum eparchialium obligatione, de qua in can. 1022, §1*»

⁵ *CCEO*, can. 1022§1: «*Episcopi eparchialis est vigilare administrationi omnium bonorum ecclesiasticorum, quæ intra fines eparchiæ sunt nec ab eius potestate regiminis sunt subducta, salvo legitimis titulis, qui eidem potiora iura tribuunt*»

⁶ *CCEO*, can. 152: «*Quæ in iure communi de Ecclesiis patriarchalibus vel de Patriarchis dicuntur, de Ecclesiis archiepiscopalibus maioribus vel de Archiepiscopis maioribus valere intelleguntur, nisi aliter iure communi expresse cavetur vel ex natura rei constat*».

⁷ *CCEO*, can. 577: «*§1. Quælibet consociatio subest vigilantia auctoritatis ecclesiasticæ, quæ eam erexit vel approbavit; huius auctoritatis est curare, ut in eadem integritas fidei et morum servetur, et vigilare, ne in disciplinam ecclesiasticam abusus irrepant. §2. Episcopi eparchialis est vigilare omnibus consociationibus in suo territorio activitatem exercentibus et, si casus fert, auctoritatem, quæ consociationem erexit vel approbavit, certiore facere et insuper, si actio consociationis in grave damnum cedit doctrinæ vel disciplinæ ecclesiasticæ aut scandalo est christifidelibus, remedia opportuna interim adhibere*».

⁸ *CCEO*, can. 133, n° 4: «*Metropolia, qui alicui provincie intra fines territorii Ecclesiæ patriarchalis præest, in eparchia huius provincie præter alia, quæ iure communi ei tribuuntur, est: [...] 4° vigilare, ut fides et disciplina ecclesiastica accurate serventur*»

⁹ *CCEO*, can. 582: «*Consociatio legitime erecta vel approbata bona temporalia ad normam cann. 1007 - 1054 et statutorum administrat sub vigilantia auctoritatis, quæ eam erexit vel approbavit, cui quotannis administrationis rationem reddere debet*»

¹⁰ *CCEO*, can. 1028 (§§1-2, n° 1): «*§1. Omnis administrator bonorum ecclesiasticorum diligentia boni patris familias suum officium implere tenetur.*

§2. Exinde præcipue debet: 1° vigilare, ne bona ecclesiastica suæ curæ concredita quoquo modo pereant neve quid detrimenti capiant in hunc finem, quatenus opus est, contractibus assecurationis;»

of *bona fide* and of *diligentia* of *pater familias* as stated in §1 of the same canon.

The Hierarchy, in accord with **can. 1045§2**, has the right to exercise vigilance by making visitations so that pious wills can be fulfilled, and at the same time executors of pious wills must render to the Hierarchy an account concerning the performance of their duty¹¹. Can. 1045 should be read in conjunction with **can. 1046§2**, which notes that a hierarchy must see to it that the goods held in trust are safeguarded and that pious wills are executed¹².

The *CCEO* ensures that the exercise of the *ius in vigilando* is particular to the bishop – the eparch – regarding liturgical life. **Can. 199§1** states that he is the “guardian” of the entire liturgical life of his own eparchy. This duty has a practical consequence: the eparch “must” be vigilant that the liturgical life should subsist in accord with the prescriptions and legitimate customs of his own *Ecclesia sui iuris*. In a word, the liturgical life must conform to the rules – and also to the legitimate customs – present in the Church *sui iuris* to which his eparchy belongs¹³.

But the eparchial bishop – the eparch – has the right *in vigilando* with regard also to ecclesiastical discipline, as prescribed by **can. 201§2**. In fact, in keeping with this canon, the eparchial bishop must be vigilant over the ministry of the word, the celebration of the sacraments and sacramentals, as well as worship and the execution of the pious wills¹⁴.

Catechetical formation is also subject to the vigilance of the eparchial bishop (**can. 636§1**)¹⁵. The *ius in vigilando* is also prescribed by the *CCEO* in **can. 1022§1**, which states that the eparchial bishop has the duty to be vigilant over the administration of all the ecclesiastical goods within the boundaries of his own eparchy¹⁶.

¹¹ *CCEO*, can. 1045§2: «*Hoc ex iure Hierarcha vigilare potest ac debet etiam per visitationem, ut pia voluntates impleantur, eique ceteri executores perfuncto munere rationem reddere debent*»

¹² *CCEO*, can. 1046§2: «*Hierarcha debet exigere, ut bona fiduciaria in tuto collocentur, et ad normam can. 1045, §2 vigilare, ut pia voluntas ad effectum ducatur*»

¹³ *CCEO*, can. 199§1: «*§1. Episcopus eparchialis utpote totius vitæ liturgicæ in eparchia sibi concredita moderator, promotor atque custos vigilet, ut illa quam maxime foveatur atque secundum præscripta necnon legitimas consuetudines propriæ Ecclesiæ sui iuris ordinetur*».

¹⁴ *CCEO*, can. 201§2: «*Vigilet Episcopus eparchialis, ne abusus in disciplinam ecclesiasticam irrepant præsertim circa verbi Dei ministerium, celebrationem sacramentorum et sacramentalium, cultum Dei et Sanctorum, executionem piarum voluntatum*».

¹⁵ *CCEO*, can. 636§1: «*Institutio catechetica in scholis quibuslibet Episcopi eparchialis auctoritati et vigilantie subiecta est*».

¹⁶ *CCEO*, can. 1022§1: «*Episcopi eparchialis est vigilare administrationi omnium bonorum ecclesiasticorum, quæ intra fines eparchiæ sunt nec ab eius potestate regiminis sunt subducta, salvis legitimis titulis, qui eidem potiora iura tribuunt*».

The *ius in vigilando* appears also in those canons concerning the monastic life; in fact **can. 454** addresses¹⁷ the issue of the dowry and in particular it notes the need for norms concerning the dowry in the *typikon*¹⁸. In accord with this canon, maintenance of the dowry given by candidates to the monastic life should be kept under control – *speciali vigilantia* – by the local hierarch.

The *CCEO* does not neglect to mention the local hierarch as well. In fact, **can. 714§2** establishes the obligation of vigilance concerning the reservation of the Divine Eucharist¹⁹. The local hierarch has the right to exercise his vigilance over the institutes for social security and health care created for the clergy (**can. 1021§2**)²⁰.

Among the procedural norms concerning trials, it is possible to find the *ius in vigilando* with reference to the General Moderator. In fact, as per **can. 1062**, the synod of bishops of a patriarchal Church has the right to constitute the highest tribunal within the territorial boundaries of the Patriarchal Church²¹; §5 of can. 1062 affirms that the general moderator for the administration of the justice has the right of vigilance over all tribunals inside the boundaries of the patriarchal territory²².

Finally, within the penal law, our topic is found in **can. 1428**²³. In accord with this canon, when the penal case is very serious and the subject is a recidivist (i.e., a persistent offender), the hierarch can, in addition to the penalties already imposed by a sentence, submit the offender to “vigilance” by an administrative decree issued by the hierarch himself.

All the above mentioned “cases” are simple examples of *ius in vigilando*, as it appears in the oriental canonical legislation in force today, as expressed by the *CCEO*.

¹⁷ *CCEO*, can. 454: «*In typico determinandæ sunt normæ circa dotem, si requiritur, a candidatis præstandam et sub speciali vigilantia Hierarchæ loci administrandam necnon de integra dote sine fructibus iam maturis quavis de causa a monasterio discedenti restituendæ*».

¹⁸ About the *typicon*, see: NIN M. and CECCARELLI MOROLLI D., s.v. *Typicon*, in FARRUGIA E. G. (ed.), *Dizionario Enciclopedico dell'Oriente Cristiano*, Roma 2000, 783-784.

¹⁹ *CCEO*, can. 714§2: «*Custodia Divinæ Eucharistiæ subest vigilantia ac moderamini Hierarchæ loci*»

²⁰ *CCEO*, can. 1021§2: «*Ubi præcaventia et securitas socialis necnon assistentia sanitaria in favorem clericorum nondum apte ordinatæ sunt, iure particulari uniuscuiusque Ecclesiæ sui iuris provideatur, ut erigantur instituta, quæ hæc sub vigilantia Hierarchæ loci in tuto ponunt*».

²¹ Cf. CECCARELLI MOROLLI D., s.v. *Diritto Processuale Canonico Orientale*, in in FARRUGIA E. G. (ed.), *Dizionario Enciclopedico dell'Oriente Cristiano*, Roma 2000, 241-242.

²² *CCEO*, can. 1062§5: «*Moderatori generali administrationis iustitiæ est ius vigilandi omnibus tribunalibus intra fines territorii Ecclesiæ patriarchalis sitis necnon ius decisionem ferendi in recusatione contra aliquem iudicem tribunalis ordinarii Ecclesiæ patriarchalis*».

²³ *CCEO*, can. 1428: «*Si gravitas casus fert et præcipue si agitur de recidivis, Hierarcha etiam præter penas per sententiam ad normam iuris irrogatas reum submittere potest vigilantia modo per decretum administrativum determinato*».

§2. Some suggestions for a “general theory” concerning *ius in vigilando*

On the basis of the canons mentioned above, it is possible to make some observations concerning *ius in vigilando* in an attempt to provide a general theory on the topic, or at least list some key points.

The first one is obvious: inside the *CCEO* there is no definition of *ius in vigilando* (unlike other institutes of canon law, like “*ecclesia sui iuris*” or marriage). The *CCEO* gives us a simple list of cases where and when the “right of vigilance” is contemplated by canon law. So this “right” is in some cases joined with an obligation or, rather, a duty, imposed by the *CCEO* itself on the hierarchy but also on other persons (such as administrators of temporal goods, e.g.).

Therefore the canons of the *CCEO* seem to give us a practical way to understand, or perhaps perceive, what *ius in vigilando* is; in a word, this “institute” of canon law is described by the canons themselves.

So I think that at this point it would be helpful to give an appropriate definition of the concept of *ius in vigilando* in a juridical sense. In my opinion it is possible to summarize the concept of *ius in vigilando* as follows.

Ius in vigilando could be defined as a right and a duty exercised by the members of the hierarchy as one aspect of their own prerogatives of governance. At the same time *ius in vigilando* is a right and a duty imposed by canon law - the Code - on the persons who in virtue of their office have the right to exercise it. In other words, *ius in vigilando* is both a power of control and a duty of control concerning acts, behaviours and facts which can have a juridical relevance for the canon law system²⁴.

The juridical consequences are now clear and can be summarized as follows.

If someone who has *ius in vigilando* does not exercise this right/duty, he undoubtedly commits an act of negligence, thus becoming guilty of negligence, and assuming to himself, in short, responsibility for what has happened. A hypothetical example may be useful. An ecclesiastical judge is very corrupt and always receives money and gifts for making decisions in favour of the party who has corrupted him. Of course the reputation of that tribunal, of that court, will be damaged by the behaviour of the judge, but his actions also erode trust in judicial institutions as a whole. Of course the corrupted judge is responsible for his acts and the significance of his behaviour is clear: he commits a crime. As is well known (can. 1114), it is forbidden for

²⁴ There is no need to define the difference between a fact (natural fact) and a juridical fact, i.e., a fact from which juridical consequences are derived.

a judge to accept gifts²⁵, and the hypothetical example under discussion falls under can. 1463, which addresses and describes the crime of corruption²⁶. In a word the judge who receives “gifts” or money is certainly considered guilty of corruption. But at the same time, if this phenomenon happens often or always in that court, there is also an “indirect” responsibility. This responsibility *a latere* belongs to the General Moderator who has failed to carry out his own duty, i.e., the *ius in vigilando* found in can. 1062§5. In fact, the General Moderator has the duty to be vigilant over the tribunals under his control. So if he does not exercise this duty, the corruption of the judge could be translated also into a liability for the General Moderator. Why? Because the General Moderator has, by his negligence, permitted the corruption to continue in a concrete way without doing anything to stop it. This failure of the General Moderator could even foster the activity of the corrupted judge. The effect is clear: there is a crime committed by the judge, and this conduct leads to the General Moderator indirectly being an accessory after the fact. Of course is very difficult for the General Moderator to know that a crime of corruption is being committed, but with *ius in vigilando* the General Moderator could prevent this crime from being committed again. In short, if the General Moderator does nothing, he could be considered to be aiding and abetting the corrupt judge (depending on how much the General Moderator has neglected his obligation of vigilance).

So notwithstanding the fact that the concept of *ius in vigilando* is not defined in canon law, its meaning is already affirmed directly by the canons of the *CCEO*. In this context is clear that Patriarchs, Major Archbishops, Metropolitans and all the hierarchs have a *ius in vigilando* and that this *ius* is also a duty from which arises an obligation, the obligation of vigilance. When this duty is neglected we have the realization of *culpa in vigilando* (I return to this concept shortly).

Therefore, the canon law system seems to know different types of *ius in vigilando*, as found in the canons of the *CCEO*.

The first type is the *ius in vigilando* concerning orthodoxy. This duty is reserved to the members of the hierarchy who must be vigilant about aspects of doctrine and of the faith. This duty falls especially to the episcopacy – every bishop is obliged to maintain this vigilance.

²⁵ *CCEO*, can. 1114: «*Iudex et omnes alii administrati tribunalis occasione agendi iudicii dona quævis acceptare prohibentur*». The same rule is given also by procurators and advocates, ex can. 1147: «*Procuratores et advocati, qui ob dona aut pollicitationes aut quamlibet aliam rationem suum munus prodiderunt, a patrocinio exercendo suspendantur et pœna pecuniaria aliisve congruis pœnis puniantur*».

²⁶ *CCEO*, can. 1463: «*Qui quidvis donavit vel pollicitus est, ut aliquis officium, ministerium vel aliud munus in Ecclesia exercens illegitime aliquid ageret vel omitteret, congrua pœna ponatur; item, qui ea dona vel pollicitationes acceptavit*».

The other type of *ius in vigilando* regards “orthopraxis,” i.e., the correct function of administrative praxis. So, for example, administrators of the temporal goods must be vigilant about them, or else they themselves could be held responsible for damage to the goods.

Orthopraxis - in my opinion - is as important as orthodoxy. In fact, if vigilance over doctrine prevents errors in faith, sacraments and dogmas, vigilance over actions and conduct prevents errors in management.

Based on what I have described above, I think it is possible to affirm that *ius in vigilando* is not a canonical institution in the strict sense, but rather it is a canonical institution elaborated by doctrine on the basis of the canons. To find the “roots” of the *ius in vigilando* inside the sources of the canons of the first millennium is not very easy. The sources of the above-mentioned canons of the CCEO²⁷ show that very few of the ancient canons - i.e., the canons of the first millennium - are utilized. In fact, only three canons have ancient oriental sources: canons 133 n°4²⁸, 1022§1²⁹, and 714§1³⁰. For all the other canons mentioned, the sources are essentially the *motu proprio* promulgated by PIUS XII (especially, «*Cleri Sanctitati*» and «*Postquam Apostolicis Litteris*»), the decrees of the Second Vatican Council and also the Council of Trent; in short, all sources of the second millennium.

Although the oriental ancient sources quoted are few, it is possible to understand from reading them that *ius in vigilando* was a “characteristic” of the hierarchy. So, for example, can. 9 of the ancient oriental synod of Antioch (341)³¹, asserts: « [...] *unusquisque enim episcopus habet suae parœcie potestatem, ut regat iuxta reverentiam singulis competentem et providentiam gerat omnis possessionis quæ sub eius potestate, ita et presbyteros et diaconos ordinet et singula suo iudicio comprehendat*»³². The synod of Antioch does not

²⁷ Cf. PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS, *Codex Canonum Ecclesiarum Orientalium - Fontium Annotatione Auctus*, Città del Vaticano 1995, *passim*.

²⁸ Sources of the canons, in accord with the *Fontium Annotatione Auctus* (*supra*), are Antioch, can. 9, and also can. 319 n° 2 of the m.p. «*Cleri Sanctitati*».

²⁹ Sources of the canons, in accord with the *Fontium Annotatione Auctus* (*supra*), are the following: Apost., can. 38 and 41; Gang., can. 7-8; Carth., 33; Nic. II, can. 12, 17; Constantinop. IV, can. 15 and 18; In addition to these canons also the canons of the “Holy Fathers” as follows: Theophilus Alexandrin., can. 11; S. Cyrillus Alexandr. Can. 2; S. Isaac M., cn. 57. See also the Synod of Shiarfe of the Syrians (year 1888), chapt. IX, art. V, 2 “Ius etiam”; chapt. XIII, art. V, 9. Of course the most recent source of the canon is the m.p. «*Postquam Apostolicis Litteris*» can. 261§1.

³⁰ Sources of the canons are the canons ascribed to the Holy Fathers of the Orient: S. Basilus M., can. 93-94, and Timotheus Alexandr., can. 24; in the *Editio cum fontibus* of the CCEO there follow also other canons of the western tradition.

³¹ Cf. SALACHAS D., *Il diritto canonico delle Chiese Orientali nel Primo Millennio. Confronti con il diritto canonico attuale delle Chiese Orientali Cattoliche: CCEO*, Roma-Bologna 1997, 21.

³² JOANNOU P. P., *Les canons des Synodes Particuliers*, in PONTIFICIA COMMISSIONE PER LA REDAZIONE DEL CODICE DI DIRITTO CANONICO ORIENTALE, *Fonti*, fasc. IX, *Discipline Générale Antique (IV^e-IX^e s.)*, t. I, 2, Grottaferrata, Roma 1962, 111 .

appear to use the word “*vigilantia*,” but the substance of the canons seems to go in this direction. In fact the bishop has the ἐξουσία (*potestas*) and by reason of this *potestas* he has the right of administration³³. The Greek verb διοικέω means in fact “to manage” and the noun πρόνοια means “provision.”

Regarding temporal goods, the sources of can. 1022§1 *CCEO* as mentioned are from the Canons of the Apostles, canons of Gangres and Antioch, as well as Carthage and Nicaea.

The collection of so-called “Canons of the Apostles” – or better the “85 Canons of the Apostles”³⁴ – puts its focus with canons 38 and canon 41 on ecclesiastical goods and their correct administration; so it is an “embryonic” norm about *ius in vigilando* with special reference to temporal goods. Canons belonging to the Gangres synod (i.e., canons 7 and 8³⁵) provide norms of ecclesiastical administration rather than a description of true *ius in vigilando*. A more or less similar issue, with special reference to temporal goods, is described in canons 24 and 25 issued at the synod of Antioch³⁶, and can. 33 of the synod of Carthage³⁷. The same topic is addressed and summarized by the Second Council of Nicaea (787), particularly in canons 12³⁸ and 17.

In a word the sources of the modern canons of *CCEO* do not show us a definition of *ius in vigilando*, but they constitute an embryonic form of norms asserting a form of vigilance, with special reference to the correct administration of goods and ecclesiastical organization.

The reason for this is clear, in my opinion, because in the Ancient Church the right of surveillance was reserved to the bishops with regard to the faith. So the bishop was - and still is - the guardian of orthodoxy, the defender of the true faith, the custodian of ecclesiastical communion and the supervisor of the correct customs of the community³⁹.

Therefore the concept of *ius in vigilando* has developed on a very practical level, as a simple fact: the bishop had the duty of surveillance for questions concerning heresy and orthodoxy⁴⁰. On a more practical level the

³³ Joannou translates the canon as follows: «chaque évêque en effet est maître de son diocèse, il doit l’administrer avec religion et veiller sur les campagnes qui dépendent de sa ville épiscopale» (ibid.).

³⁴ About this collection, see CECCARELLI MOROLLI D., *Alcune riflessioni intorno ad una importante collezione canonica delle origini: “Gli 85 Canonici degli Apostoli”*, in PASSARELLI G. (ed.), *Miscellanea C. Capizzi*, in *Studi sull’Oriente Cristiano* 6 (2002), 151-175.

³⁵ Cf. JOANNOU P.P., op. cit., 92-93.

³⁶ Cf. *ibid.*, 123-124.

³⁷ Cf. *ibid.*, 248-249.

³⁸ Cf. VV. AA., *Conciliorum Oecumenicorum Decreta*, Bologna 1991, 147-148 and 151.

³⁹ For a look at the rights and duties of the bishop in ancient times, in accord with the *sacri canones* of the first millennium, see: SALACHAS D., op. cit., 93 ff., and *praesertim* 116 s.

⁴⁰ Cf. CECCARELLI MOROLLI, *Some brief notes about how the Church received Heretics in Orient in agreement of the “Sacri Canones” of the 1st Millennium*, in «Iura Orientalia» 3 (2007), 66-72.

correct administration of ecclesiastical goods has imposed the right of surveillance on the bishops, beginning in more ancient times.

While the foundation of *ius in vigilando* is very embryonic as found in the ancient canons of the first millennium, it is possible to assert that this right is now, by the modern legislation, affirmed *de facto*. Of course it is possible to consider the roots of this important institution inside the Church as grounded in human rather than divine law. Nevertheless, this institution implies some important consequences. The defence of “orthopraxis” and of “orthodoxy” are two sides of the same coin. Who does not exercise the *ius in vigilando*, or exercises it badly, could be accused of *culpa in vigilando*. This principle is now clear on the international penal level too. It can be summarized as follows: the superior must know what the inferior does, and the superior too is responsible for the activity done by the inferiors. Of course we have two different types of responsibility: one is personal and direct (i.e., someone who commits a crime), while the other is a fault.

I have already mentioned above that the concept of *culpa in vigilando* is considered by the *common law* system as an indirect responsibility, i.e. vicarious liability. In the system of *civil law* the concept is very similar. In *civil law*, such as in the Italian civil system, those people who have the task of vigilance are considered to be exonerated from responsibility only if they are able to prove that they could not have avoided the fact that produced the damage⁴¹. It is possible to remark that no special penalty is inflicted by the *CCEO* on those who have neglected the duty of *ius in vigilando*. The penal canonical law system, unfortunately, does not provide a penalty for that, so we have the case of an “imperfect legal norm” (imperfect canon), i.e., norms without a corresponding sanction. But the *culpa in vigilando* produces juridical consequences, notwithstanding the fact that there is no penalty for it in the *CCEO*. So what is *culpa in vigilando*, or how is it possible to describe it?

In simple words, *culpa in vigilando* is the other side of *ius in vigilando*. These two aspects, or rather, these two juridical concepts are linked to each other - like two sides of the same coin - where one side is the *ius in vigilando* and the other side is the *culpa in vigilando*.

On the basis of what I have mentioned above, I think that a general reflection is also possible with special reference to penal canon law. In my opinion, a hierarch who neglects the obligation of *ius in vigilando*, for example, about *crimina graviora*, could be not only considered as a simple subject with a *culpa in vigilando*, but also - in accord with the penal law of all the juridical systems - as accomplice or abettor of a crime. In this regard a

⁴¹ So, e.g., art. 2048 of the Italian Civil Code.

comparison can be made with another juridical institute, coming from the military environment. The Church is a hierarchical society, a society of the faithful structured in a hierarchal way: starting with the catechumens and ending with the Roman Pontiff (the Supreme Head and Shepherd of the Church, but also the Supreme Judge and Legislator). In such a context (hence the parallelism with the military organization), it is logical to understand that the superior should know what the inferior is doing. Of course this principle could be dangerous, if taken in the strictest sense; in fact the superior cannot always know what the “inferior” is doing or attempting to do. If we pressed this principle to its logical extreme we could realize not a “church” but a *Polizeistaat*! In any event, another case is the situation where a superior knows that a subject, an inferior, has committed a crime, yet the superior fails to report the crime to the police. In this circumstance the above-mentioned “theory” could be applicable; so the “hierarch” could automatically be considered an accomplice of the criminal and of the crime. The classic example in all the penal systems is given by the person who sees some thieves who are stealing something and he does not call the police or do anything in his power to avoid the crime which is happening *ictu oculi*. In contrast, when only the hierarch can know the crime (except of course in the case of matter learned in the sacrament of penance), he must exercise the *ius in vigilando* against facts, behaviours and acts which are *contra legem*.

In this context, *ius in vigilando* assumes a particular relevance and its effects are all juridical effects – effects which are, unfortunately, today before everybody’s eyes.

In conclusion, it is my personal opinion, based on what I have mentioned above, that all the members of the hierarchy should take seriously their own rights and duties regarding *ius in vigilando*. In this regard, I think that the words of the Gospel are more illuminating than a juridical argument: « [...] *So be alert! You don’t know when the master of the house will come back. It could be in the evening or at midnight or before dawn or in the morning. But if he comes suddenly, don’t let him find you asleep. I tell everyone just what I have told you. Be alert!*» (Mark 13: 34-37). Notwithstanding the fact that this is a “theological-eschatological” passage without a specific juridical intention, the correct exercise of *ius in vigilando* avoids the rise of *culpa in vigilando*, with all the possible juridical and judiciary consequences, so “be alert, be vigilant”!

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