

**Court of Verona, Civil Section, March 30, 2023 (Natural filiation - measures for the child and for the protection of property interests - priestly celibacy - loss of clerical status)**

The civil section of the Court of Verona, in a recent ruling, condemned a priest to the recognition of the daughter born from the relationship with a woman, with consequent registration at the registry office and payment of a amount of money, part of which as arrears for the child's maintenance. According to the reconstruction of the facts, as emerging from the ruling, the priest - a parish priest in the Verona diocese - had entered into a stable romantic relationship with a foreign woman in 2015, from which a daughter was born in 2017. Although he did not deny that he was the natural father - as also confirmed by DNA testing - the priest had never wanted to recognize the daughter and had continued - with the consent of his hierarchical superiors - to exercise his priestly ministry after moving to another diocese. A criminal complaint against the priest for violation of family care obligations had been dismissed in 2021, motivated on the grounds that *"a priest could not be forced to be a father."* The proceedings in the civil court, on the other hand, ruled that the interest for the good of the weakest subject, the minor, should be put before even the condition of being a member of the sacred order, and that the constitutional duty/right (Art. 30 Const.) to maintain, instruct and educate children, even if natural, cannot be limited by the exercise of the priestly ministry.

The ruling presents a different orientation, taking into account that, up to this point, jurisprudence had ruled in similar cases, pursuing the main objective of safeguarding the autonomy of the canonical system and its decisions; with the ruling under comment, fundamental relevance to the best interest of the child attaches.

As for the specific civil sphere, the decision of the Scaliger judges pertains to the institution of the judicial declaration of paternity and/or natural maternity, pursuant to Articles 269 et seq. of the Civil Code, is in line with well-established case law of the Court of Cassation (sentt. 2065/94; 8042/98; 14029/05; 2328/06), as most recently expressed in Judgment no. 7896 of 2014: *"nell'ipotesi in cui al momento della nascita il figlio sia riconosciuto da uno solo dei genitori, e quindi uno solo di essi sia tenuto a provvedere per intero al suo mantenimento, non viene comunque meno l'obbligo dell'altro genitore a risarcire la propria quota di mantenimento per il periodo anteriore alla pronuncia di dichiarazione giudiziale di paternità o di maternità naturale, essendo sorto sin dalla nascita il diritto del figlio naturale ad essere mantenuto, istruito ed educato da parte di entrambi"* and most recently in the order No. 28330/2020.

On the other hand, under the pastoral-canonical profile, not only the ever "hot" topic in the intra- and extra-ecclesial debate about the obligation of priestly celibacy (can. 277 CIC) comes up again, but also the issue - still forbidden - of the protection of the rights of "children of priests" and the consequences for the cleric who has so gravely violated the ecclesiastical law of perfect and perpetual continence, while contracting natural obligations that cannot be eliminated or avoided lightly. In the book *"Il cielo e la terra"* written with Rabbi Abraham Skorka, the then Archbishop of Buenos Aires, Jorge Bergoglio, wrote: *"Se uno viene da me e mi dice che ha messo incinta una donna cerco di tranquillizzarlo e a poco a poco gli faccio capire che il diritto naturale viene prima del suo diritto in quanto prete. Di conseguenza deve lasciare il ministero e farsi carico del figlio, anche nel caso decida di non sposare la donna. Perché quel bambino ha diritto ad avere una madre, ha diritto ad avere un padre con un volto"*.

The Dicastery for the Clergy in the *Note* - unpublished - on the subject of clerics with offspring specifies the practice of having "fathered" priests who request it obtain the Rescript of the Apostolic See of the loss of the clerical state (can. 290 CIC) and the pontifical dispensation from the obligation of celibacy (can. 291 CIC), even before the completion of the 40th year of age. More generally, the

ascertained presence of children is treated by the Dicastery as a cause of fact, irreversible and most serious, which determines rapid time in granting the dispensation from the obligations descending from ordination. More problematic is the situation in the case where the priest does not proceed with the request for "dispensation." In this hypothesis, the *Note* invites Bishops and Superiors to present the case directly to the Dicastery, which will be able to decide - examining each case on its own merits and peculiarities and taking into account the special Faculties he enjoys - for dismissal from the clerical state, motivated also by the fact that *"la responsabilità genitoriale crea una serie di obblighi permanenti che nella legislazione della Chiesa latina non prevedono l'esercizio del ministero sacerdotale"* (<https://www.vaticannews.va/it/vaticano/news/2019-02/card-stella-figli-sacerdoti-criterio-bene-bambini.html>).

In particular, among the Special Faculties granted by the Supreme Pontiff in 2009 to the Dicastery for the Clergy, and in line with the issue of interest, is that of *"intervenire ai sensi del can. 1399 CIC, o agendo direttamente nei casi o confermando le decisioni degli Ordinari, qualora i competenti Ordinari lo chiedessero, per la specialità gravità della violazione delle leggi, e per la necessità e l'urgenza di evitare un oggettivo scandalo"* in derogation of the provisions on the application of perpetual punishment and always with specific approval and decision of the Holy Father (<http://www.clerus.va/content/dam/clerus/Plenaria%202017/03%20-%20Facolta%CC%80%20Speciali.pdf>).

In 2017, the Irish Bishops' Conference approved the document *"Principles of Responsibility for Priests who have fathered children during their ministry"* which reminds us that in these circumstances, the needs of minors are always paramount and that the priest is expected to meet his responsibilities. The document specifies four "pillars" of reference: the best interests of the child, dialogue with and respect for the child's mother, dialogue with hierarchical superiors, and compliance with civil and canonical laws. More recently, the Congo Bishops' Conference published the document *"In the School of Jesus Christ (cf. Eph. 4:20). For an Authentic Priestly Life. An Exhortation to Priests on Priestly Chastity and the Rights of Children and Vulnerable Persons"* in which priests who have a child are urged to request a dispensation from priestly obligations and bishops, in case of resistance from priests, to present the case to the Holy See, also pointing out the negative and serious consequences that result in such situations: clandestinity, lack of adequate education and absence of a father figure.

Such interventions by the bishops were also brought about by the lack of specific references in the Code of Canon Law on the subject. In addition to the hypothesis of the cleric who attends even civil marriage (can. 1394 CIC), who is punished with suspension *latae sententiae* and with further deprivation, where he does not repent, until dismissal from the clerical state, can. 1395 §1 CIC, in particular, configures the offenses of the cleric concubinage, that is, having a stable relationship of a sexual nature with a person of a different sex, or persisting with public scandal in another sin against the sixth commandment, to be punished *ferendae sententiae* with the censure of suspension to which other punishments may be gradually added, after admonition, until discharge from the clerical state. It is not necessary, therefore, in the case of concubinage that it be a public affair or that there be scandal. Consequently, however, sexual conduct that is disordered but occasional and not public is not the direct object of the canon. The critical profiles are different, also in relation to the case of the judgment under comment, in that the discharge from the clerical state provided for by the Code of Canon Law is configured, in the remembered hypotheses, as an *extrema ratio*, to protect the offender but at the risk of the rights and protection of the child, and it cannot be excluded that, where the birth of a child is consequent to an occasional or non-stable sexual relationship of a priest, it would also be difficult to configure a specific violation on the part of the priest.

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