

**DIVORCE, A QUESTION OF CHURCH DISCIPLINARY ACTION
Recommendation of the Presidency Board
Regarding the Modification of Law No. 1/2000. § 80 and Ecclesiastical Jurisdiction**

The Suspension

80. § (1) In the framework of the disciplinary procedure, the Presidency or responsible collegium of judges of the court may suspend a pastor from service or function, if:

a) a penal procedure against the pastor is in process

b) the degree or nature of the misdemeanour deems it necessary

(2) Forthwith, when the Presidency of the Court becomes aware of any of these transgressions it is required to commence proceedings officially. It must dispose of the pastor's suspension from service, if the pastor initiates proceedings for marriage dissolution or a procedure against the pastor is already in process.

(3) The Court is required to suspend the officer from his office until the decision becomes absolute, if the Court finds in its decision the disciplinary punishments expressed in points d,f,g,i of § 32 (1).

Justification

In the first requirement for suspension (1), a refinement of the text is needed because some have interpreted the possibility of suspension for only the elected officers, but in fact, it can also pertain to any pastor who serves. The suspension can apply to service in general, to the performance of service in certain places and it can pertain specifically to the tasks connected to a certain office (i.e. deanship)

According to the second requirement (2), it is compulsory that in the case of pastor divorce – whether he/she initiates the marriage dissolution or the spouse commences the action, either by revealing the reasons behind the dissolution or by common consent—the disciplinary procedure must be taken. It is necessary to declare this commitment because in many cases in the past, the handling and examination of the issue was delayed or cancelled. This is a result of a misconstruction of text within the law. Under point “k” of Law §30, the chargeable dissolution of marriage is a disciplinary misdemeanour. The Ecclesiastical Court began to examine the chargeability simply under the judgement of the civil court. Ultimately, it found that a confidential crisis appeared around the pastor during long-continued dissolution actions, the church's community abandoned the church and the church was discredited as well.

As soon as the ecclesiastical superior becomes aware of the pastor's divorce the proceedings are forthwith initiated.

If the proceedings are initiated, the question of accountability will be brought into focus, but it should not be examined in a lay or secular manner. Many times this does not occur because the parts conclude proceedings by mutual consent or agree as a result of long-continued litigation, and the lay court judgement does not involve events preceding the divorce. The pastor's liability is examined according to our confession, vow and internal laws. It is important to the pastor that the Ecclesiastical Court makes a declaration concerning the emergence of the situation, accidental or not. (Under term court, we understand not only the well-dealing council, because the Presidency is part of the court too, and it has the ability to make different decisions regarding the case if it thinks the disciplinary procedure is not reasonable.)

In regard to the community, it is important that the pastor does not serve until the above circumstances are clarified.

The deadline of the suspension is narrowly restricted. The Presidency of the Court can declare a 30-day suspension, at the longest, until the collegium of judges is assembled. The judges may extend the suspension twice, by 60 days each time.

According to the proposal, the primary aspects of the law modification are defence of the community, recovery of the church's authority and preservation of congregational confidence related to pastoral function. The suspension, which is compulsorily employed, can be a tool to accomplish these goals.