

THE PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS

EXPLANATORY NOTE

VIII. Elements for the clarification of the canonical area of responsibility of the diocesan bishop with regard to priests incardinated in his own diocese and priests working within his diocese.

(Communicationes, 36 [2004] 33-38)

I Ecclesiological Premises

Diocesan bishops, as vicars and legates of Christ, govern the particular Churches entrusted to them “with counsel, persuasion, good example, but also with the authority of sacred power” [2].

Priests, by virtue of the sacrament of Order, are consecrated to preach the gospel, to shepherd the faithful and to celebrate the sacred liturgy, as true priests of the New Testament [3]. They participate in the work of Christ, the one mediator, according to the proper grade of their ministry. Every priest must be incardinated into a particular Church, or in a personal prelate, or in an institute of consecrated life or a society of apostolic life which has this faculty (can. 265) [4].

There exists between the diocesan bishop and his priests a sacramental communion in virtue of the ministerial - or hierarchical - priesthood, which is a participation in the one priesthood of Christ [5].

As a consequence, under the juridical profile, the relationship which exists between a diocesan Bishop and his priests cannot be reduced either to the relationship of hierarchical subordination of public law found in the juridical system of states or to the relationship of dependant work between an employer and an employee.

II. The nature of the relationship of subordination between a priests and a diocesan bishop.

The relationship between a diocesan Bishop and priests, arising from ordination and incardination, cannot take as its standard the subordination that exists in civil society in the relationship between an employer and an employee.

The bond of subordination of the priest to the diocesan Bishop exists as a result of the sacrament of Order and incardination in dioceses, and not only as a result of the obligation of obedience required of clerics in general towards their proper Ordinary (Cfr. can. 272) [6], or indeed as a result of the obligation of oversight on the part of the Bishop (Cfr. can 384) [7].

Nevertheless, such a bond of subordination between priest and Bishop is limited to the arena of the exercise of their proper ministry which priests must undertake in hierarchical communion with their own Bishop. The diocesan priest, however, is not merely the passive executor of commands received from the Bishop. In fact, he enjoys a legitimate initiative and a just autonomy.

With regard to ministerial obedience, concretely speaking it is a hierarchical obedience, confined to the sphere of requirements which the priest must carry put in fulfilment his office and which must not be likened to the type of obedience realised between an employer and his employee. The service which the priest carries out in the diocese is bound to a permanent and lasting involvement which he has assumed not with the physical person of the Bishop but with the diocese by means of incardination. It is not, therefore, a labour relationship easily renounced by the whim of the “boss”: the Bishop cannot, unlike the employer in the civil realm, “exonerate” the priest without verifying

for himself precise conditions which do not depend of the discretion of the Bishop but which are established by the law (Cfr. cases of suspension from office or of dismissal from the clerical state). The priest does not “work” for the bishop.

Besides, there are also relationships of subordination in the sphere civil of life – in military life or in public administration, for example – in which superiors themselves are not legally responsible for the offences committed by those subject to them.

III. The sphere of hierarchical subordination between priests and the diocesan Bishop

The bond of canonical subordination of the priest with his own bishop is confined within the sphere of the exercise of the ministry and thus to the acts directly tied to it, as well as to the general duties of the clerical state.

a) The diocesan Bishop has the duty to attend to the priests with particular concern and to listen to them as co-workers and advisors. He must, moreover, defend their rights and see that the priests faithfully fulfil the obligations proper to their state, and that they have at their disposal the means and institutions needed to sustain their spiritual and intellectual life; moreover he must ensure their adequate livelihood and social welfare, in accordance with the norms of the law (Cfr. can. 384) [8].

Such duty of solicitude and supervision on the part of the Bishop is confined to all that concerns the proper state of priests, but it does not constitute a general duty of vigilance over their entire life.

Above all, from a strictly juridical-canonical point of view only the sphere of the general duties of the proper state and of the ministry of priests can and must be the object of supervision on the part of the Bishop.

b) Although one cannot speak of a true right on the part of the incardinated priest, the diocesan Bishop must provide for the conferral of an office or a ministry to be exercised in favour of that particular Church for whose service the priest was promoted (Cfr. can. 266, §1) [9].

Ministerial obedience is required within this sphere of the priest towards his proper Ordinary (Cfr. can 273) [10], along with the duty to faithfully fulfil whatever is required by his office (Cfr. can 274, §2) [11]. The direct responsibility, however, is of the office holder and not the one who has conferred it.

The Bishop must, for his part, must be attentive that the priest be faithful in fulfilling his proper ministerial duties (Cfr. cann 384 and 392) [12]. The pastoral visit represents an ideal occasion of for the Bishop to ascertain this (Cfr. cann 396-297) [13].

c) The Bishop, moreover, has the duty to provide for an effective respect for the rights of priests arising from incardination and the exercise of the ministry in the diocese. Amongst these one might mention the right to adequate remuneration and social provision (Cfr. can. 281) [14], the right to an appropriate term for holidays (Cfr. can. 283, §2) [15], the right to receive ongoing formation (Cfr. can. 279) [16].

d) In the sphere of the duties of the clerical state the Bishop has, amongst others, the duty to remind the priests of the obligation to perfect and perpetual continence for the sake of the Kingdom of Heaven and of conducting themselves with due prudence in their relations with those with whose company could endanger the fulfilment of such obligation or could cause scandal to the faithful; it

belongs to the Bishop to judge the observance of this obligation in particular cases (Cfr. can. 277) [17].

IV The sphere of the autonomy of the priest and the eventual responsibility of the Bishop

The diocesan Bishop cannot be held juridically responsible for the acts the diocesan priest performs by transgressing the universal and particular canonical norms.

a) The correct or, inversely, the unfaithful response of the priest to the norms of the law and to the directives of the bishop concerning the priestly state or ministry does not fall under the sphere of the juridical responsibility of the Bishop, but of the priest himself, who will answer personally for his own acts, even those performed in the exercise of the ministry.

Much less can the Bishop be held juridically responsible for the acts which concern the private life of priests, such as the administration of their own goods, residence or social relationships etc.

b) The diocesan Bishop could only eventually have responsibility in reference to his duty of oversight, but under two conditions:

- whenever the Bishop has shown little interest in offering the necessary assistance required by the canonical norms (Cfr. can. 284) [18]

- whenever the bishop, having known about the transgressive or positively offensive acts committed by the priest, might not have adopted the adequate pastoral remedies (Cfr. can. 1341).

In Conclusion

Having considered:

a) that the bond of canonical subordination between priests and the diocesan Bishop (Cfr. can. 273)[19] does not generate some sort of generalised subjection but is confined to the sphere of the exercise of the ministry and of the general duties of the clerical state;

b) that the duty of oversight of the diocesan Bishop (Cfr. can. 384) [20], consequently, is not configured as an absolute or indiscriminate control over the entire life of the priest;

c) that the diocesan priest enjoys a sphere decisional autonomy, be that in the exercise of his ministry or in his own personal and private life;

d) that the diocesan Bishop cannot be held legally responsible for the actions which the priest has committed, in transgression of universal and particular laws, within the ambit of such an autonomy.

e) that the particular nature of the ministerial obedience required of the priest does not make the Bishop a “boss” of the priest in so much as he does not “work” for the Bishop and that, as a consequence, it is not juridically correct to consider the priestly ministry analogous to a relationship of “dependant labour” existing in civil society between an employer and an employee;

f) that the canonical notion of a delict (Cfr. cann. 1312 and 1321) [21] and that of cooperation in a delict (Cfr. can. 1329) [22] exclude the possibility of blaming the diocesan Bishop

for the delictuous acts of a priest incardinated in his diocese, except for those cases which are explicitly foreseen (Cfr. cann. 384; 1384) [23].

g) that the canonical order does not contemplate so-called “objective responsibility” - not holding it a sufficient title by which to impute a crime - but foresees a “co-operation in delict” , which most certainly is not proven merely by the fact that the Bishop might be the Superior of the offender.

This Pontifical Council holds that the diocesan Bishop in general and in the specific case of the delict of paedophilia committed by a priest incardinated in his diocese in particular, has no legal responsibility on the basis of the relationship of canonical subordination existing between them.

The delictuous action of the priest and its penal consequences – as also any eventual indemnification of damages – are imputed to the priest who has committed the delict and not to the Bishop or to the diocese of which the Bishop is the legal representative (Cfr. can. 393) [24].

Vatican City, 12th February 2004.

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President

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Secretary

[1] In the text reference is made to *Codex Iuris canonici* (CIC), and the reference to *Codex canonicorum Ecclesiarum Orientalium* (CCEO) is given here in the endnotes.

[2] Vatican Council II, Dogmatic Constitution *Lumen Gentium*, 27; John Paul II, Apostolic Exhortation *Pastores Gregis*, 16 October 2003, 43; can. 381 CIC.

[3] Cfr. Dogmatic Constitution *Lumen Gentium*, 28.

[4] Cfr. Ca. 357 CCEO.

[5] Cfr. Vatican Council II, Decree *Presbyterorum Ordinis*, 7; Apostolic Exhortation *Pastores Gregis*, 47.

[6] Cfr. can. 370 CCEO

[7] Cfr. can. 192, §§4-5 CCEO.

[8] Cfr. *ibid.*

[9] Cfr. can. 358 CCEO

[10] Cfr. can. 370 CCEO.

[11] Cfr. can. 371 CCEO.

[12] Cfr. cann. 193 §§4-5; 201 CCEO.

[13] Cfr. can. 205 CCEO.

[14] Cfr. can. 490 CCEO.

[15] Cfr. can. 392 CCEO.

[16] Cfr. can. 372 CCEO.

[17] Cfr. can. 374 CCEO.

[18] Cfr. can. 192 , §§4-5 CCEO.

[19] Cfr. can. 370 CCEO.

[20] Cfr. can. 192, §§4-5 CCEO.

[21] Cfr. can. 1414 CCEO.

[22] Cfr. can. 1417 CCEO.

[23] Cfr. can. 192, §§4-5 CCEO.

[24] Cfr. can. 190 CCEO.