

THE CDF DOCUMENT OF 18TH MAY 2001

There are a number of issues arising from the CDF document of 18th May 2001 that concern the whole Roman Curia and/or raise questions of possible conflict between Church and State. As such they appear to be matters for the Secretariat of State.

PAPAL DISPENSATIONS

In the past, in some cases of very serious abuse, various bishops made a request to the Pope to dispense a priest from all the obligations of priesthood and return him to the lay state. The dispensation was given, even against the will of the priest concerned. At the meeting in Rome in April 2000 it was said that these requests put the Pope in a difficult situation and were not to continue.

However, the cases that gave rise to these dispensations still occur, and it will not be possible to handle many of them according to the CDF procedure, mainly because of the statute of limitations. So will the Pope continue to dispense in the future? If not, how are these cases to be handled?

TITLE AND INSIGNIA

There are other cases in which it is not necessary and probably not advisable to return the offender to the lay state, but it is essential that he be denied any privileged access to minors. In practice this means that he be denied the use of clerical clothes and collar (insignia) and be forbidden to call himself "Father" (title). Once again many of these cases cannot follow the procedure of the CDF document. So will the Pope dispense in these cases? If not, how are they to be handled?

UNACCEPTABLE RISK

Cases can arise where a cleric cannot be given a position that confers privileged access to minors because there is an unacceptable risk, based on past events or allegations, that the person will commit sexual abuse against those minors.

For example, four girls aged between six and eight years complained to their respective parents that the same priest had performed identical improper actions on them. On two separate occasions the police charged the priest with one of these offences, but on each occasion it came down to his word against that of a small girl and he was acquitted. However, if the four cases are put together, it is obvious that there is a serious, and therefore unacceptable, risk of an offence against another small girl.

Bishops and religious leaders would be subject to penalties, including imprisonment, if they ignored these risks. There would also be massive negative public reaction if a bishop or leader were found to be negligent in this matter.

The problem is that this concept does not exist in canon law. The procedures of the CDF are seen as the sole means by which permanent penalties may be imposed on a cleric. A cleric could appeal to the appropriate Congregation against an action of a bishop or leader based on the concept of unacceptable risk and the Congregation would probably uphold his appeal and order that the cleric be restored to ministry. This creates the potential for a serious conflict between Church and State.

CONSCIENCE

There are circumstances in which a bishop or religious leader can find that he must say, "Irrespective of either civil or canon law, in conscience before God alone I must remove this man from his office and cannot give him a new appointment." In another case he might even have to say, "I cannot in conscience before God alone allow this person to continue to wear a clerical collar or call himself 'Father'".

There are cases in which this can occur and yet no judicial case is possible, e.g. because of the statute of limitations. A bishop or leader must be free to follow his conscience.

STANDING ASIDE FROM AN OFFICE

It is the custom in most countries that follow the Common Law tradition that a person accused of a serious offence stands aside from his office while the matter is being investigated. He remains the holder of that office, but does not reside at the place of the office or carry out any act of jurisdiction or administration. An administrator is appointed until the matter is resolved. In canon law his legal status is equivalent to that of a bishop *sede impedita*.

If the Church does not follow this practice, there can be serious criticism from the whole community, including good Catholic people. For example, if a priest is arrested by the police and charged with sexual abuse of a minor, there can be serious scandal if the Church allows him to continue to administer his office while the matter is being heard.

Canon 1740 allows that a priest can be removed from his office when his ministry "has for some reason become harmful or at least ineffective, even though this occurs without any serious fault on his part." If a priest can be permanently removed from his office for these reasons, then surely he can be asked to stand aside from the office temporarily in similar circumstances. And yet canon law does not make allowance for this.

THE PASTORAL VERSUS THE LEGAL

The CDF document forces bishops and leaders to think in terms of crime and punishment from the beginning and this is not the way in which cases have been approached until now. To most bishops and leaders abuse is a cause of harm to victims, a scandal and a pastoral problem. Their reaction has included a response to the needs of the victim, an appropriate response to the situation of the offender and an attempt to address the pastoral problems created for the whole community of the Church.

In relation to the offender, most have tended to leave punishment to the State and to see their own role in terms of treatment and prevention of future offences. When the fact of abuse has been admitted or confirmed, they have tended to rely on an agreement with the cleric about limitations on his future activities and, where appropriate, on an agreement by the cleric to request a return to the lay state. They have tended to turn to penalties only when there has been no other way of resolving the situation. To have to concentrate on crime and punishment from the beginning, with everything else following on behind, is seen as inappropriate and inadequate.

In a particular way, returning an offender to the lay state is not always an appropriate response. There are situations where it is important that the bishop or leader retain some control over where the priest lives, the clinical treatment he is given, the continuing support he receives and the safeguards that are put in place to ensure that he does not offend again. This can involve lengthy and delicate negotiations. In some places it can lead to a contract being signed between the cleric and his bishop or religious leader. The CDF requirement to think in terms of crime and punishment from the beginning is a very poor means of conducting these delicate negotiations.

The CDF document does not address the whole issue of abuse. It does not even mention victims. A response to the whole pastoral problem is essential. This seems to be a matter for the Secretariat of State, for the whole issue involves Church-State relations in a most sensitive field where the Church is being placed under great pressure by the State.

THE "GRAVER CRIMES"

In the CDF document cases of sexual abuse are subjected to the needs of the other crimes listed there, e.g. concelebrating with a non-Catholic minister, celebrating with bread but not wine.

There may well be arguments for having a tribunal consisting of three priests judges, a priest notary, a priest promotor of justice and a priest advocate in the cases just mentioned. There may well be advantages in having a statute of limitations of ten years for these cases. And there may well be arguments for subjecting such cases to pontifical secret. But this is not true of cases of sexual abuse and it is not good to subject the needs of abuse cases to the needs of the other cases. There is a serious need for a process designed solely for cases of abuse.

THE STATISTICS

It is likely that only a relatively small number of cases will be referred to the CDF.

The main reasons for this are:

- The fact that criminal cases brought by the police will take precedence;
- The statute of limitations;
- The unwillingness of victims to submit themselves to the CDF process;
- The desire of bishops and leaders to respond to the whole pastoral situation and, in this context, to reach agreements with offenders before turning to penalties.

It would be a pity if, because of these factors, the CDF were to conclude that cases of paedophilia by priests are very rare and can safely be ignored in the bigger picture of the life of the Church and even of the lifestyle of priests.

Should there be an agreement between our Conferences that we will keep Rome informed of the size and complexity of the problem? If so, could we agree on

- what statistics we should forward to Rome
- which Congregation we should forward them to
- what types and particular difficulties of cases we should draw to their attention?

QUESTIONS WITHIN THE CDF DOCUMENT

The CDF document is very brief and it leaves a number of questions unanswered. Among these questions are the following:

1. If a priest is found guilty of abuse of a minor by a civil court, must the Church hear the case all over again before an ecclesiastical tribunal, with a new interrogation of the victim, before it could impose a perpetual penalty on him? Under what conditions may the Church use a) the evidence and b) the judgement of the civil trial in deciding whether perpetual penalties may be imposed?
(If a civil court finds a priest guilty and a church court then finds him not guilty, the local Church will face most serious problems)
2. If a number of accusations are made against the same priest, must there be a separate trial for each of them or can they be considered together? That is, can there be cumulative proof of guilt?