

# Belgian church cannot simply escape criminal liability for paedosexuality<sup>1</sup>

**Since the former bishop of Bruges, under pressure from his victim, has confessed to many years of paedosexuality, the matter of child abuse by catholic priests has yet again received a lot of attention in Belgium. Suchlike cases can result in a criminal procedure, not only against the abuser himself but also against bystanders who have buried their head in the sand.**

By **Bjorn Ketels**

PhD candidate

Institute for International Research on Criminal Policy (IRCP)

Department of Penal Law and Criminology – Ghent University

Universiteitstraat 4 – BE-9000 Ghent

T (+32)(0)9/264.97.03 – F (+32)(0)9/264.69.71

Bjorn.Ketels@UGent.be

[Http://www.ircp.org](http://www.ircp.org) – [Http://www.gofs.eu](http://www.gofs.eu)

The scandal of paedosexuality, and its aftermath, has kicked up quite a lot of dust in the religious world. In a pastoral letter of 19 May 2010 the bishops and diocesan administrators of Belgium explicitly cry peccavi: ‘We have to confess that clergymen in charge have insufficiently recognized the seriousness of child abuse and the scale of its consequences. By keeping silent, priority was given to the good reputation of the church or a clergyman above the child’s dignity as a victim’ (liberal translation). Therefore, they have promised the development of a deontological code for priests and other clergymen who work with children, adolescents or vulnerable adults. Over and above this, pastoral workers will be better supervised and counselled, and criteria for permission to be ordained or to any other responsibility within the church will be tightened.

The afore-mentioned ecclesiastical resonance obviously does not preclude a criminal procedure in case of child abuse in a pastoral relationship. Faced with an intricate legal framework, the

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<sup>1</sup> This paper is based on Bjorn KETELS, “Kerk kan verantwoordelijkheid voor pedofilie niet zomaar ontlopen”, *Juristenkrant* 2010, no 211, p. 4-5.

resigning Minister of Justice recently suggested deploying two reference magistrates, who would, *inter alia*, be concerned with advising the (meanwhile likewise resigning) Adriaenssens Commission about the possibilities for taking legal action, specifically filing a complaint with the Public Prosecutor.

Just like the abusers themselves, clergymen who play the ostrich could face criminal conviction. They could first of all be prosecuted for failing to act in respect of a person in great danger. According to the Penal code (article 422*bis*), anyone who fails to give or to provide assistance to a person in great danger, when either he himself has identified this condition or it was described to him by those who call for his assistance, is liable to eight days' to one year's imprisonment and/or a fine of 275 to 2750 euro. The rationale of this law consists in combating social selfishness and lack of human solidarity. In order for the crime to be committed, the person concerned has to be aware of the situation of child abuse (an awareness that can be deduced from the facts, taking into account that jurisprudence adopts a quite lenient attitude towards the matter) and nevertheless freely withhold effective and adequate assistance, such as introducing the victim directly to a specialised service, and, as a last resort, even informing the judicial system (instituting criminal proceedings for child abuse can indeed occur irrespective of a complaint from the victims themselves) whereas he could in fact have intervened without gravely endangering himself or others. If the person concerned has not personally identified the danger threatening the victim (i.e. if it was described to him by someone who called for his assistance), there is an additional requirement. In that case, the person concerned cannot be punished if the circumstances in which his assistance was required could have led him to believe that the request was not serious or that danger was involved. It goes without saying that a situation of (sexual) child abuse produces great danger as legally required. Reference can be made to the 1995 adaptation of article 422*bis* of the Penal code, aggravating the maximum imprisonment from one to two years, if the person in great danger is underage. 'Thus attempts are being made to stimulate adult responsibility in regard to minors in danger', according to the law's explanatory memorandum (liberal translation). In no uncertain terms the memorandum establishes that it is unacceptable for an adult, informed about the great danger threatening a minor, to maintain silence, whether or not he is related to the victim or to the aggressor. Thus, the duty to give or to provide assistance not only applies, for instance, to the parents of a victim of child abuse in a pastoral relationship but also to other bystanders, such as clergymen. In the above-mentioned circumstances, clergymen could not cite the confidentiality of the confessional or the duty of professional confidentiality not to give or provide assistance.

In addition to this, clergymen who are or should be aware of child abuse, could also commit other crimes by neglecting to intervene, possibly entailing more severe penalties (see for instance the legal conceptions of commission by omission and of participation by omission).

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