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Jurisdictional immunity of the Holy See and responsibility for the sexual abuse by the clergy. Considerations on the basis of the judgment of the European Court of Human Rights of October 12, 2021. in the case of J.C. et al. vs. Belgium (Application no. 11625/17)

Summary

In its judgment of October 12, 2021 (application no. 11625/17), the European Court of Human Rights (ECHR) for the first time referred to the issue of the Holy See's immunity. The case is of a precedential nature. It is highly probable that this ruling will determine the line of the Court's case-law for a long time. It did not find anything irrational or arbitrary in the detailed justification which led the Court of Appeal in Ghent (Belgium) to conclude that it had no jurisdiction to adjudicate on a civil liability action against the Holy See for sexual abuse by representatives of the Belgian clergy, in particular, due to its immunity from jurisdiction. The ECtHR found that this limitation complied with generally recognized principles of international law and was not disproportionate.

The Belgian courts and the ECtHR treating the Holy See as a state is an over-interpretation. The Holy See cannot be treated as a foreign sovereign. This is a historical anachronism. At the very most, we can speak of the so-called 'spiritual sovereignty' of the Holy See, which is related to the fact that it is the governing body of the Catholic Church. However, it has no public-law powers over church structures and its followers. The Church is a voluntary international private association of natural persons. It has no administrative power over its members. The Holy See has a superior position over bishops. Therefore, it should also be responsible for the lack of a proper reaction by these church leaders to the sexual abuse of the clergy subordinate to them. In the past, the Catholic Church operated a policy of silence (omerta) based on clericalism. The pontificate of Pope Francis brought about fundamental changes in this area. However, the judgment of the European Court of Human Rights of October 12, 2021 is procrastinating and will probably trigger what can be termed a 'chilling effect'. What takes precedence is the good of the influential institution - the Holy See - and not those individuals wronged in their childhood.

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