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Pope Francis addresses the leadership, staff and members of the Pontifical Commission for the Protection of Minors during an audience at the Vatican. (CNS/Vatican Media)

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The Vatican Dicastery for Legislative Texts strongly cautioned against publishing "news" that would harm the reputation of an individual, especially someone who is deceased, when it comes to priests accused of abuse and not found guilty in civil or canonical procedures.

The right to defend oneself and the principles of presumed innocence until proven guilty must be protected and guaranteed, said a letter signed by Archbishop Filippo Iannone, prefect of the dicastery, and Bishop Juan Ignacio Arrieta, dicastery secretary.

They also said the church must uphold the principle of the non-retroactivity of crime, that is, that no person can be criminally responsible under a law or statute for conduct before that law enters into force.

Another "undeniable legal foundation" for forbidding this practice, they wrote, is Pope Francis who wrote: "It is necessary to prevent the lists of the accused being published, even by dioceses, before the preliminary investigation and the definitive condemnation."

That statement was one of 21 "reflection points" the pope gave bishops and religious superiors at the 2019 Vatican summit on protecting minors in the church. The pope connected that point to "the right to defense: the principle of natural and canon law of presumption of innocence must also be safeguarded until the guilt of the accused is proven."

Therefore, the archbishop and bishop wrote, "the answer can only be negative with respect to divulging confidential news concerning anyone, especially in the case concerning deceased persons."

The letter, written in Italian, was dated Sept. 5, 2024, but was posted recently on the dicastery's website, delegumtextibus.va, under "chiramenti normativi" (legislative clarifications) and "circa dovere per bona fama defuncti" (concerning the duty for

the good reputation of the deceased).

The dicastery's letter was addressed to an unnamed "monsignor" or bishop in response to his letter dated July 3 requesting an interpretation of Canon 220: "No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy," and how it applies to the deceased.

While not mentioning specifics, the letter clearly referred to the practice of publishing lists of priests "credibly accused" of abuse, including deceased priests, and it criticized the low standard of proof often used to define "credible."

The prelates had asked "two esteemed canonists who are experts in the field" for their input in crafting the "following observations" and forging their opinion, they said.

They explained that Canon 220 prohibits slander and defamation, and the Catechism of the Catholic Church (2477-2479) also requires respect for a person's reputation by forbidding every attitude and word likely to cause unjust injury and avoiding rash judgment, detraction and calumny.

If it is not licit to "illegitimately injure" a person's good reputation, they wrote, then there are some cases in which such harm "can be legitimate, for example, to avoid any danger or threat to people or the community."

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However, they added, "It would not be legitimate by any means when such risk is reasonably excluded, as in the case of alleged criminals who are deceased, where there can be neither legitimate nor proportionate reason for the injury to reputation."

"Therefore, it does not seem permissible to justify the publication of such news for alleged reasons of transparency or reparation — unless the subject consents and, therefore, once more this excludes deceased persons," they wrote.

However, they wrote, there are more legal issues at play than just the impossibility of a deceased person defending himself or herself against accusations: there are two

universal principles of law that must be protected:

— The presumption of innocence of every person until proven — judicially — to the contrary and definitively, which is part of Canon 1321.1.

— The principle of non-retroactivity of crime, "whereby one cannot be judged — and as a consequence, not even charged — for conduct that at the time of its eventual commission did not formally constitute a crime."

Criminal law "cannot apply to acts and conduct that at the time they were carried out were neither illicit, nor crimes, nor offenses; for example, with regard to so-called omissions of one's general responsibilities of supervision" or due diligence, they added, most likely referring to Francis' move in 2016 to require bishops and religious superiors to be vigilant, transparent and accountable for their actions or inaction in handling abuse allegations.

These principles, they wrote, "cannot reasonably be overridden by a generic 'right to information' that puts any kind of news in the public domain, however 'credibly,' to the actual detriment and existential harm of those who are personally involved, all the more so if (the news) is inaccurate, or directly unfounded or false, or completely useless such as is that case with deceased persons."

"Furthermore, determining whether an allegation is 'well-founded' often rests on a non-canonical foundation and demands a relatively low standard of proof, resulting in the publication of the name of a person simply accused, but of an unproven accusation, without the benefit of having exercised the right to defense," they wrote.