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U.S. court OKs legal action against the Holy See

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All Things Catholic

News reports last week suggested that a U.S. district court in Oregon had opened the door to legal action against the Holy See in a case related to the sexual abuse of minors. If that ruling were to hold up, it would mark an important blow to the immunity the Holy See generally enjoys as a sovereign entity under international law.

In fact, legal experts stress this was merely a preliminary decision, and that we're a long way away from any American court actually agreeing to hear a lawsuit seeking damages against the Vatican.

Nonetheless, the Oregon ruling raises anew what some Vatican officials have long regarded as a nightmare scenario -- the specter of American courts assessing massive financial penalties against the Holy See.

Such concern was behind a request made by Cardinal Angelo Sodano, the most powerful Vatican official after the pope himself, to the U.S. Secretary of State Condoleezza Rice in a Feb. 8, 2005, meeting. Sodano asked Rice for an intervention by the State Department in a sex abuse lawsuit in Kentucky, where the Holy See had been named as a defendant.

What Sodano wanted was for the State Department to assert the Holy See's immunity from liability as a sovereign state, something the State Department has done before when the Holy See has been sued. In the end, the Kentucky court upheld the Holy See's sovereign status, as American courts invariably have up to this point.

Sources told *NCR* this week that in subsequent meetings with American officials, Sodano has repeatedly expressed consternation over lawsuits against the Holy See in American courts.

Until the 20th century, foreign states enjoyed more or less blanket immunity from legal action under American law. As states came to engage in a variety of commercial activities, however, and as the presence of foreign agents in the United States increased, a theory of "restrictive immunity" began to emerge, which held that states should not enjoy immunity when engaged in non-sovereign activity, meaning the kind of activity that private firms or individuals could also perform.

In 1976, Congress adopted the "Foreign Sovereign Immunities Act," which codified this restrictive principle. It reflected a distinction between *de jure imperii*, referring to governmental activities for which immunity remains intact, and *de jure gestionis*, meaning commercial or private activity for which states can be sued like anybody else.

For example, American courts will now hear cases against foreign governments under two "commercial activity" exceptions, such as a case in which a state-operated enterprise has defaulted on a contract, or wrongfully deprived someone of their property. There's also a "tort exception," to cover a case in which an agent of a foreign state causes harm to someone in a private capacity, such as running into their car. The mere fact of being a foreign agent, the theory runs, should not get that person off the hook for paying for the damages.

In the wake of the sexual abuse scandals in the United States, attorneys have tried repeatedly to invoke these exceptions to name the Holy See as a defendant. Some have argued that the Vatican is engaged in "commercial activity" in the United States, since some portion of American collections end up in Rome; others have argued that clerics are "agents" of the Vatican, and hence the Vatican is liable for their misconduct under the tort exception.

The Oregon case concerns an Irish priest named Fr. Andrew Ronan of the Friar Servants of Mary, who died in 1992. The lawsuit alleges that Ronan engaged in sexual abuse in the 1950s while serving in an Irish priory, and was then transferred to St. Philip's High School in Chicago, run by the Friar Servants, where he again abused youths in 1963-64. In 1965, Ronan was moved again to St. Albert's Church in Portland, Oregon, where the suit alleges that he abused the plaintiff, identified only as "John Doe."

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The lawsuit names the Portland archdiocese, its archbishop, the archbishop of Chicago, and the Order of the Friar Servants of Mary, along with the Holy See, as defendants.

In effect, the lawsuit argues that Ronan was an "agent or employee" of the Holy See, and hence that the Holy See is responsible for damages arising from the sexual abuse he is alleged to have committed. Judge Michael Mosman of the Oregon court held that while the commercial activity exceptions did not apply in this case, there could be a basis for proceeding under the tort exception. The court did not make any finding as to facts, and left open the question as to the next step.

Berkeley-based attorney Jeffrey Lena, who has represented the Holy See in most such cases, has filed a notice of appeal with the 9th Circuit Court of Appeals. In various press interviews, Lena also said that other barriers to jurisdiction, such as First Amendment issues, have not even been reached, as well as purely legal questions such as the statute of limitations.

Most legal experts say it's a long shot that the court will eventually take jurisdiction, among other things because it's a stretch to argue that every Catholic priest, brother and sister in the world is an "agent" of the

Vatican. (That would suggest a corps of more than 1.2 million Vatican "agents" in every nook and cranny of the planet). Normally an "agent" or "employee" is defined as someone whose day-to-day activities are directed by the employer, who is supervised by the employer, and whose paycheck is signed by the employer. It would be difficult, experts say, to show that such was the case with Ronan.

Further, it would have to be shown that the "sovereign," meaning the Holy See, caused the abuse in Oregon to take place, or that it knew of the abuse and failed to stop it. One would have to prove that someone in the Vatican tracked Ronan's affairs, and hence in theory should have known what he was up to.

Aside from the Oregon and Kentucky cases, there's one other lawsuit currently making its way through American courts that seeks to establish jurisdiction over an agency of the Holy See -- the Institute for the Works of Religion, popularly known as the "Vatican Bank." *Alperin v. Vatican Bank* deals with the Vatican's alleged role in recycling loot stolen by the pro-Nazi Ustasha regime in Croatia during World War II (the Franciscan Order is also named as a defendant).

To date, the wall of sovereign immunity in American courts has held up where the Vatican is concerned. As with floods and hurricanes, however, the problem with lawsuits is that it only takes one.

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