

# PROVIDING LEADERSHIP IN AGING PROVINCES: A CHALLENGE TO GENERAL COUNCILS

## **Pax Bank Lecture**

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**RCRI Editor's Note:** *This article is reprinted here with permission of Dr. Myriam Wijlens. Her 2011 lecture to the same august gathering was published in our Spring 2014 edition of the RCRI Bulletin. Dr. Wijlens invitation to speak again on 2014 is indicative of her valued expertise on the subject of aging communities. As mentioned in our Spring edition, RCRI continues to further the dialogue that religious institutes in the United States have both internally and with other communities on the subject of Planning for the Future.*

In 2011 the then Chairmen of the Pax Bank e.G. Dr. Christoph Berndorff invited me to speak to religious in leadership positions here in Rome. I keep good memories of that meeting as it provided me with the opportunity to meet with several religious of different institutes. My lecture then – as today – focused on the question of providing for leadership in religious institutes when due to aging the members themselves are no longer capable of exercising such leadership. In my lecture I focused in particular on the situation in The Netherlands, as the situation there seems to be most advanced in comparison with other countries in the world. The median age of religious women in The Netherlands is currently above 85 years. In most institutes there are virtually no members younger than 75 years of age. The institutes of men, be they clerical or not, reveal a similar picture. Even though the median age is a bit lower, the life

expectancy is lower than it would be for women religious. So in practice they meet similar challenges.

I am quite familiar with the situation in The Netherlands, because I have been a member of the Canonical Affairs Commission of the Conference of Major Superiors in The Netherlands for more than 20 years now. You might be surprised about this considering that I'm not a member of a religious institute myself. Indeed, experts in the law on religious are usually religious themselves. So how did this happen and why my engagement for religious?

I owe it to religious sisters in particular that I am a canon lawyer today. As I was studying theology in Nijmegen in the 1980s, I was fascinated by the second Vatican Council and wondered what it would take for the church to live in agreement with this

council. What was needed so that the doctrine would have an impact on the life of ordinary faithful, on the relations with other Christians, on the way the church is governed? I discovered that structures have something to do with this: they can assist a community in implementing its vision. Structures may promote and support doctrinal insights, but by the same token they can also hamper their reception. Hence, I decided to study canon law.

Till today these questions about the translation from doctrine into legislation and from legislation to the application of doctrine fascinate me and are the object of my academic work as a scholar. I decided to study in Ottawa at the University of the Oblates of Mary Immaculate. However, studying in Canada was relative expensive, so the question arose: *who would pay for this?* I then turned to some religious institutes in the Netherlands and asked whether they could help. One superior made a remark that turned out to be one of great wisdom. She said:

In the Netherlands the clerical religious institutes closed their own seminaries in the 1960s and 1970s. This implies that they will not educate members as canon lawyers because they will not need them there as professors. Hence the canon lawyers of today will be the canon lawyers of the future. We can therefore estimate that in about 20 to 25 years no canon lawyer belonging to a religious institute will be available any more. We as women religious will be the first to suffer, because they will not be able anymore to advise us. And yet, when the numbers of our institutes will continue to decline – which is likely – we will meet major challenges

in those final years of our provinces and generalates.

I think, she said, that you should study, and she added, “The time is ripe for a woman to serve the church in this field.”

So, in particular religious institutes of women paid for my studies, and—maybe more important—they prayed for me. Religious women paid and prayed, religious men educated me.

I attended a Carmelite high school, had Dominicans as teachers in theology in Nijmegen, studied canon law with Oblates but had a Jesuit as director of my dissertation. In my free time I was often with the Priests of the Sacred Heart (Dehonians). What more could I have wanted? I had a marvelous time in Ottawa where I was indeed able to study with students from approximately 90 dioceses from 27 countries. For the rest of my life I learned that there might be one Code of Canon Law, but up to 90 different applications that are all legal.

When I was about to finish my doctorate, the same sister said: “Yes we paid for your studies, but it does not mean that you should work in The Netherlands. There are no obligations towards us. Go, where the Lord will need you in His vineyard and serve Him there.” So I accepted an invitation to continue studies in Germany and ultimately became a professor. However, in 1992 I also responded to the invitation by the Conference of Major Superiors in The Netherlands to join its Canonical Affairs Commission.

For many years I had the privilege to work there closely with a former vicar general of the Redemptorists and with a Divine Word canon lawyer—both of whom had actually

worked at the Congregation for Religious in the 1980s when many religious institutes revised their constitutions—and with a Montfort Father, a Cappuccian and a Lazarist. The Commission always had brothers and women religious who had been general or provincial superiors and usually someone of the contemplative orders was present as well. It has been a privilege to work with them and above all to learn from their wisdom.

The sister about whom I spoke before was almost right in her estimation. It was not 2010, but 2013 when the last member of our commission who is a canon lawyer and a religious died at the age of 81. The country has currently no religious left who are active as canon lawyers. From the seven dioceses only one still has a vicar for religious. Indeed this brings us to the topic of today.

The numbers of religious go down all over: Western Europe, North America, Australia and New Zealand. They go down to such an extent that new challenges arise which concern the leadership of these institutes and indirectly the existence of the institutes as such. In many countries the situation is such that they are about 10 years behind what happens in The Netherlands. Initially it was difficult for many in surrounding countries to accept what was happening in The Netherlands. Now a few years later we see that in several countries in Europe provincial leadership teams begin to face the same challenges as their confrères and sisters in The Netherlands.

In the past years I spoke for large gatherings of religious in leadership positions in Germany and Austria. They report indeed comparable challenges and interestingly they begin these talks when the median age comes close to 75 years. Publications in the USA and exchanges with colleagues in

Canada and Australia reveal a similar pattern. Hence what might have appeared to be the problem of one country is now all over the Western World. As a consequence general superiors and general councils are faced with new challenges. Indeed what seemed to be an issue for provincial leadership has become a matter for the agenda of general councils. Recently a general councilor told me he is now responsible for aging issues in his institute. The next general chapter, he said, would probably spend an afternoon on the subject.

In my presentation today I will mention some challenges, some possible solutions, and issues where we are to search together.

The challenges you meet do not come only from real life. They also come from the law, as the legislation of the church does not make provisions for the current situation. Hence, the challenges arise not just for you as leadership of a religious institutes but also for the diocesan bishops and the Congregation for Institutes of Consecrated Life.

We are faced here with a so called *lacuna iuris*: the universal law makes no provisions for religious institutes who lack members that can exercise leadership. The law then prescribes that recourse is to be made to legislation enacted for similar situations. Regretfully, the universal law also makes no provisions for associations of the faithful or for juridic persons as such that lack members or administrators that could govern them.

This implies that religious institutes, diocesan bishops and the Congregation for Institutes of Consecrated Life are asked to search for solutions together. The solutions must be such that they are of real help to the people concerned. This implies that they

must be solid theologically, but pay attention to the situation in which the problems occur. These can differ to a great extent because the finances in one place are quite different from another; cultural factors and different languages might be of relevance.

- In some provinces there are still large numbers—up to 200—but all members are rather old, whereas in other provinces there might be as few as three to ten members left.
- In some places members can be found to be on the provincial council but no major superior can be found, while in other provinces it might be just the other way around.
- In some places there are no younger members at all, whereas in others there is a group of younger members which then leads to the question whether they should be in leadership positions or in the apostolate.
- In some places the civil law might provide options or cause restrictions which in other places and countries it does not. For example, provision by the state for the physical care of elderly and the payment thereof differs substantially from one country to the next.
- Some provinces might bear major financial responsibility for provinces in other parts of the world, others might be more on the receiver side.
- The issue of being of pontifical right or diocesan right certainly plays a role with regard to who bears a responsibility for the members and their well-being. But there again one can meet religious institutes of diocesan right that are nevertheless all over the world and thus might be faced with three provinces in three different continents, speaking three different languages. In that case, the diocesan bishop of the main seat has major challenges to meet. However, we might

also be speaking about institutes of pontifical right that have only houses in one country, because the former provinces became independent religious institutes.

Those of you working in general councils know too well the differences and are thus aware that what might be appropriate here does not apply there at all. Or what might go here already does not go there yet. The different provinces do not all move at the same speed.

Notions such as decentralization and subsidiarity might lead to different actions by general councils. On the one hand, it might be unlikely to have a uniform solution even for all your provinces. In a way you might be dependent on people on the ground to assist your community. On the other hand, the notion of subsidiarity also implies that if a lower level is not able to act (anymore) the higher has to take on the responsibility. General councils are therefore called to attend to the needs of the provinces in the long run and address issues related to the aging. They are to assist the provinces to come to take stock of where they are and what their plans are for the future.

Allow me to use an image: about 15 years ago my parents then about 65 years old renovated their kitchen, living room and bathrooms. My mother insisted that the arrangement would be such that, if necessary, grips and handles could be put in place when they would be old. There should not be any barriers. My father was against it, because, he said, “We are not that old yet.” My mother won the battle. About two years ago Dad suddenly fell seriously sick and was in need of nurses, etc. What a blessing it was that he could stay at home, because it took my brother only two hours to install the

grips. All the rest was in place because my mother had had a long term vision.

To transfer this example to an institute: the question is not only one of attending to appropriate housing, but also to leadership that is in place when something unexpected happens to them that prevents the community from continuing. General councils need to bring about an awareness to have a plan so that they themselves and the provinces become aware of the needs and challenges.

Three years ago I therefore presented a questionnaire that the Conference of Major Superiors developed. This questionnaire helps religious institutes to become aware of their needs and the issues they think they will face. Some of you have worked with that questionnaire, adapted it for your institutes, and have had very good experiences. But the questionnaire was not just developed to assist leadership to see where needs and challenges are. Rather, it was meant to assist all members to become aware of the issues that need to be addressed. Hence the members of the different communities should discuss the questions together.

A caution is in place. Over the years I have experienced that the real issues and difficulties do not lie with the juridical aspects. Much more delicate and complicated are the emotional issues that need careful navigating. It is important to bring everyone on board and to go forward together. After all, the members have to fill the structures with life. It is important to take time and to be aware that elderly take more time. Often it is better to have one more round of deliberations rather than act too quickly. This could prevent your having to deal with people who will object for the

rest of their lives, which then will make life miserable for all involved.

It is extremely important to have moderators of chapters who themselves are familiar with the canonical and juridical possibilities and are ahead of the process in the group, so to speak. In many cases I have found that external moderators are better than one's own members, because they can deal better with anger and feelings of loss.

Indeed the issues are not just organizational, but touch the lives of people deeply, because they are at the same time confronted with their own mortality. Questions of who will take care of me personally will arise as well, but not necessarily be voiced. The different stages as described by Küppler Ross might occur.

I recall a meeting of provincials in Europe in a particular institute. Suddenly one of the priests got very angry and almost shouted: "When I entered this institute I looked after the elderly confreres. I expect that there are younger confreres to look after me. That was the deal. I do not care where you get them from, but I want to be cared for by younger confreres and not by strangers." It was important that he voiced his anger, disappointment and fear.

As a canon lawyer I have become cautious to hear whether the questions raised, such as in chapters, are really canonical or just arguments to somehow handle this sense of frustration. Canon lawyers can help to solve the legal issues which are to serve the members of religious institutes; the people are indeed not there to serve the structures. So let us attend to some of the issues that occur.

## A. The Finance Officer

Among the first questions that arise in an institute faced with aging concerns the finance officer. Does this person have to be a member of the religious institute? The initial answer must of course be: consult your Constitutions. Some Constitutions make no reference to such a requirement whereas others do state explicitly or implicitly that the finance officer is to be a member.

Three questions thus arise:

- 1) Even if there is no mention at all, would it not be self-evident that the person is a member?
- 2) If there is an implicit or explicit mention that the finance officer is to be a member, can one get a dispensation from this requirement?
- 3) If it is clear that the problem of finding a member is going to take a long time, would it be wise to change the Constitutions and leave it open? Related to this would be the question whether the Congregation for Institutes of Consecrated Life would approve such a change in the Constitutions.

To answer these questions three points need attention: What does the universal law determine? What does the discussion during the revision of the Code reveal? What would be ideal and what is possible? Let us attend to these questions.

The universal law states in canon 636 that in each institute and in each province that is governed by a major superior, there is to be a finance officer, distinct from the major superior, and constituted according to the norm of proper law. The finance officer carries out the administration of goods under the direction of the respective superior. In local communities the finance officer should be distinct from the local superior to the

extent that this is possible. The acts on the revision of this canon reveal that there was a discussion about the question whether the finance officer ought to be a member. It was decided that this should be left to each institute to be determined in the Constitutions (*Communications* 1995, p. 102).

In some Constitutions there will be no mention of a member to be appointed as finance officer in the section on the finance officer. However, such a reference might be made implicitly in another section, such as when the *ex officio* members of the chapter are listed and there the finance officer is mentioned as well. This implies that a careful reading of the Constitutions is required.

In recent contact between the Conference of Major Superiors in the Netherlands and the Secretary of the Congregation for Institutes of Consecrated Life, the Secretary made clear that if the Constitutions do not have a prohibition to appoint a lay person as finance officer, it would be admissible when there is a true and grave necessity, although this should remain an exception. If there is however no such provision in the Constitutions, then permission of the competent authority would be required. The letter goes on to explain that although the administration of the temporal goods is to be distinct from the major superior (c. 636 §1) it belongs nevertheless to governing an institute and is thus related to the superior (cf. 1279 §1). For this reason the finance officer performs his or her task under the authority and according to the guidance of the Superior and is accountable to this superior (cc. 636, 1276 and 1287).

Hence, the relation between the finance officer and the superior transcends the relationship that exists based on the task.

The relationship between a superior and a finance officer is ecclesial and religious and is therefore governed by the principles of the canonical order and not by mere employment contracts, which are subject to civil law.

Another aspect to consider, according to the Holy See, concerns the “religious” nature of ecclesiastical goods, their finality and the use within religious life. They transcend the practical, technical and organizational aspects. The fact that the technical and professional component and concrete needs are considered to be of higher importance might lead institutes to prefer lay administrators with the consequence that the institute and the religious themselves might then in fact be dependent on the choices made by lay administrators which, however, are not purely technical and administrative.

From these Comments one may conclude:

1. If the Constitutions do not state that the finance officer is to be a member, and provided one of your provinces arrives at the conclusion that there is a grave need for appointing a non-member, this can be done. It should be an exception, but it can be done. I would consider “great need” in proportion not only to the availability of the members but also to the temporal goods to be administered. In case a non-member is the finance officer, that person can never be a member of the chapter.

2. In case the Constitutions do state that the finance officer is to be a member of your institute you could ask for a dispensation from the competent authority, which would be the Holy See if you are an institute of pontifical right. Likewise diocesan bishops could grant such a dispensation in case of a diocesan right institute. As with any dispensation there would need to be a just

and reasonable cause (c. 90). What is “just and reasonable” is to be seen in proportion to what is being administered (see point 4 below).

3. If it can be foreseen that such provisions are needed for several provinces and for many years to come, you might consider changing your constitutions to have more flexibility. The Holy See would need to approve this.

4. Care should be taken to choose the right person to be the finance officer. Indeed and rightly so, the finance officer should have an affinity with ecclesial and (specifically) religious life. Here it might help to recall that the finance officer of a diocese needs to be “truly skilled in financial affairs and absolutely distinguished for honesty” (c. 494 §1). What would be required for the finance officer of a dioceses might also be required for a finance officer of a religious institute, whether the person is a member or not. The skills that a person would need might be proportionate to the budget, the responsibility for the number of members and possibly for those who are employed in the province, the question whether money for other provinces are administered as well, whether buildings are rented out, etc.

5. With regard to the administration of the goods, it is important that the finance officer is aware that the church—and therefore also the religious institute—does not possess property, but rather has temporal goods. The purpose of temporal goods in a religious institute is to provide for the support of the members, to perform the works of the apostolate and of charity, especially towards the needy. Such awareness can also be transmitted in courses and meetings.

In The Netherlands the economic advisors of religious institutes—who are not necessarily

the finance officers—meet regularly to study and discuss common questions with regard to the administration of ecclesiastical goods. I have had the privilege to be invited a few times, because they themselves wanted to hear the ecclesial and indeed canonical view on administering temporal goods. These persons also investigate professionally issues related to taxes and tax exemptions, the upkeep of heritage buildings, social and medical insurances, etc. They do so through the lenses of religious institutes. Often times these persons have begun their “ecclesial” career as volunteers on parish finance councils or in the hospital of the sisters, etc. They are indeed no strangers from the street, so to speak. The Conference of Major Superiors in The Netherlands has suggested that no person be accepted for these positions who advises more than five institutes at the same time. They should also retire from their position at the age of 75, so that their advice is not dated.

What we also do not see as opportune is when the finance officer or members of the finance council of the diocese are somehow involved in the finances of the institute. We see here a possible conflict of interest when it comes to alienation. We would go so far as to state that no one of the leadership of a diocese should be involved in the actual leadership of an institute, because of possible conflicts of interest, and the need to preserve and promote the rightful autonomy of the institute vis-à-vis the diocese (cc. 586 and 593).

Even in diocesan institutes the bishop does not have a power of governance, but one of vigilance. The Holy See has stressed this point on a number of occasions. Regretfully I have to report that some dioceses seem to be highly interested in getting involved in the final stages of an institute in order to obtain the property.

6. Of great important is the role of the superior in relation to the finance officer. The finance office exercises the task under the guidance of the superior (c. 636 §1). It would seem that in real life the challenge might come in finding superiors who are capable of exercising this function. The issue of accountability comes in. It might be wise to implement here a provision in canon law that is mentioned in book V on temporal goods. Canon 1280 states that every juridical person should have a finance council or at least two financial advisors. Such a provision would prevent that one person determines everything or would make unwise decisions. Accountability not only to the superior is important. After the sexual abuse scandal some colleagues of mine predict that the next big issue is going to be related to property.

7. A more critical comment seems to be in place here as well. When speaking about finding outsiders as finance officers or also as part of a leadership team—as we shall see in a moment—often times a differentiation is indeed made between religious and clerics on the one side and laity on the other side. Personally I prefer to see the distinction between members and non-members. A religious of another institute or a diocesan priest is not “a kind of” a member either. Membership in a religious institute is clearly obtained through profession only. I find it at times peculiar that the church believes that laity cannot understand religious or clerical life, but that it does not seem to be a problem for any cleric or religious to understand and speak about marital and family life.

8. One could consider outsourcing the task of finances as well as other administrative tasks. Indeed a small institute might ask a larger or a larger might be asked to assist a smaller. This could also occur as provinces



merge, the provincial leadership is located in one country and someone needs to do the administration in another country. In Canada several religious institutes—including provinces of pontifical right institutes—set up a separate juridic person in civil and canon law that has as task to assist the members—these are the different institutes—to attend to the finances, medical insurances, leasing and renting, cemeteries, etc. The juridic institute does what it is commissioned to do.<sup>1</sup>

## **B. Lack of Members for Leadership Positions**

After the question about the finance officers the next most often raised question concerns the number of councilors for a province. Can the number be reduced? The number of councilors is determined in the Constitutions and might be further specified in directories. Often these mention a minimum and a maximum number.

A few reflections are in place.

1. To reduce the number of people might imply that the same work load is to be divided among less people. Hence, the councilors will face a heavier burden. As people get older, that might not be realistic. Due to aging it might be easier to have five people share the workload of three people, resulting in a workload of each 60% instead of three having a workload of 100 % each. So, ask yourself whether it is wise to reduce the number of councilors?
2. The number of councilors relates strongly to the culture of decision-making in your institute. Often times the culture of decision-making is also closely related to the charism of your institute. If you have an

even number of councilors, your constitutions probably provide for most decisions to be taken by the Major superior and the councilors together. If the number is uneven, most decisions are probably taken by the Major superior after having heard or having obtained the consent from the council. Often times leadership teams respond that they act as a team and discuss decisions to arrive at unanimous decisions. Indeed this might be the practice, but the Constitutions will reveal what kind of decision-making process takes place from a juridical point of view.

In case there is disagreement on a certain topic in a leadership team, this will be of great relevance. Because the “decision-making tradition” usually relates to the charism of the institute, it is a good that needs protection. Hence it might be possible to reduce the number of councilors from four to two or from five to three members. It might not be wise to reduce it by one, as you might risk that you get into a tie regularly. Recall that if the Constitutions determine that a superior needs the consent of the council, he or she cannot participate in that vote and thus cannot break a tie (c. 127), as that would imply that he or she gives consent to him- or herself.

3. You might want to consider the time of office. A 78-year-old might be capable and willing to be on the council for another three years, but maybe not for six years. It might also help to prevent the extremely difficult decision to address issues of an increasing mental disability of a councilor. The other members often feel embarrassed to even address the issue in particular because the problem due to its nature increases slowly.

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<sup>1</sup> See the article on the Canadian PJP Project in this same edition of the RCRI Bulletin.

4. Many institutes decide to ask assistance from outside to help the council in its works. This begins with secretaries or even a kind of office manager. They prepare the meetings, write the minutes of the meeting, see to the invitations for the meeting, and assist in the execution of the decisions where necessary and possible. They prepare the chapter, see to translations, see to the maintenance companies, etc. Again the men and women in The Netherlands who are asked to do this have known the religious for and with whom they work for a long time. They are indeed no strangers to each other.

Recently a 56-year-old woman was appointed to an institute where she had been a pupil and student, and later she earned some pocket money at the reception of the convent in the weekends and evenings. She then became the head of the personnel office of the association of nursing homes that once were run by the institute. Here she had the financial and personnel responsibilities for 2500 nurses and caregivers. At the age of 56 she wanted to slow down and agreed to work for the provincial superior, even accepting much less pay, but hoping for more quality of work.

5. A possible next step concerns the appointment of a councilor who is not a member. So far I have not experienced this yet in an institute of pontifical right, but saw this in several institutes of diocesan right. Indeed the non-member appointed was a member of a pontifical right institute. Hence, the leadership of a pontifical right institute might be asked to provide a member for this office. The Holy See would indeed prefer other religious or clerics to be appointed for this position. However, religious institutes in The Netherlands foresee that they might be in need of external councilors for more than a short time, or in the short run (e.g., 2014-2020),

would rather provide a long-term (e.g., 2020-2030) solution for this problem. In the long run, they do not see which other institutes would have available councilors or who the clerics would be. A conversation between the religious, the bishops and the Holy See focuses on this topic. Indeed as mentioned before with regard to the finance officer, it might be wise to distinguish between member and non-members, and not between religious of other institutes—diocesan clergy on the one hand and lay persons on the other hand. The religious would also like to provide somehow for this in the constitutions, because they would like to somehow have a say in who is actually appointed as their councilor.

One can conclude that a reduction of the number of councilors might not necessarily be the solution. As suggested earlier, in some institutes 5 times a 60% workload might be preferable over 3 times a 100% workload. It might be advisable to see whether a non-member can assist the team in its work. The non-member has of course no vote but can be given a right to speak unless the non-member has been appointed legitimately to the office of councilor.

### **C. There Are Councilors, But No Major Superior**

In many institutions it takes a long time before it is admitted that no one can be major superior any more. It often begins with postulation of the incumbent superior. When unexpectedly he or she becomes seriously ill, no one knows what to do. There are different options: merge in time with another province or change the province into a house under the generalate. I will address first the latter, as it is in a way easier than the merging of provinces.

## Change a Province into a House

When a province has tremendous problems finding people for the leadership team it might be presumed that such a province has a high median age and owns no apostolic works any more. If they do have apostolic works, it is highly recommended to attend to them as soon as possible. Usually such a province has several if not many members who receive medical care from outsiders, assistance in the kitchen, laundry, and in the cleaning of the house because their own members cannot provide this anymore. Often times members live in convents that might be arranged as health care facilities; those who are older but healthy live in small communities of three or five people. It is often also difficult to find superiors for the different houses that might still exist.

One option would be to suppress the province and merge the different existing canonically erected houses that used to belong to the province into one house. The one house may have three or four locations which would be the houses that were just merged. The property of the province would as well move to the canonically erected house. The superior and councilors of this one house could be elected or appointed from the members. Here the Constitutions might make provisions. Indeed virtually all religious institutes have provisions for houses that fall under the responsibility of the general council. This provision is in place because of houses established in territories where the institute was not present in the past.

There is no reason why these norms could not be used for the houses in the Europe as well. With the suppression of the province, the obligation to hold a chapter is also eliminated. A member of the general council could be assigned to be a liaison.

There are some advantages and disadvantages to this model:

- The former province remains a unit and interaction with outsiders of other province is unnecessary. Psychologically we should recall that in many institutes the Dutch province was the largest in the congregation 40 to 60 years ago. That is when the sisters were already 20 years in profession. So that is a major psychological factor, but for members sometimes easier than the thought of merging with the German province as there are cultural differences and memories of the Second World War.
- Because there is no merger with other provinces, there are no language and/or cultural issues. (For outsiders Germany and The Netherlands are not that different, but in real life this is not so simple).
- Constitutions make provisions for houses under the generalate.
- Attention is to be made with regard to the interaction of the civil and canonical person. With the change from the province to a house the civil entity may remain as is (E.V. in Germany or VzW in Belgium). Nevertheless, civil lawyers should advise whether contracts such as for renting and leasing property need attention.
- In some countries civil law or concordats require that there is a juridic person in canon law with its main seat in the country. Only in this way can special privileges granted to the church be secured. In virtue of canon 584 a legitimately erected house is automatically a juridic person. Note that canonically a “house” is not a building, but a community. For The Netherlands this is sufficient for interaction in the civil realm. I know that Austria also needs a canonical juridic person with the main seat in Austria

in order to act and enjoy special privileges, but I have not been able yet to clarify whether a house would be sufficient there or not. (In some countries older laws determine that the person representing the juridic person must have the nationality of the country, but this would seem not to hold any longer due to EU legislation.

- In civil law we can usually make clear that the change is merely an internal reorganization. Therefore no tax is due on the transfer from one juridic person to another. In canon law the transfer of property between parts of a religious institute is not considered to be alienation, so there is no need to get permissions from the Holy See.
- The bishops of the dioceses concerned should be informed—no need for permission—as they are also to be informed when a house is erected.
- According to many institutions a house does not need to have a chapter the way a province would have to. It takes away a heavy burden.
- Earlier I spoke about asking for assistance from outside. Indeed in two particular cases the provinces became houses under the generalate. The superior of the house had a nonmember assisting her in her tasks. At some point neither the superior nor any other members of the house could travel long distances anymore and therefore could not attend meetings organized by the general council. The person who assists the superior goes to these meetings and has there a right to speak, but not to vote. In this way communication and participation is secured albeit in a different way as it used to be.

- The change from a province into a house may not be the best option when the province does have younger members who are indeed working in the apostolate, but who should not be all placed in leadership of the institute for two reasons: they did not join the community to be in leadership, but because of the charism and apostolate. If there are younger members, the question arises whether they should indeed live their religious lives which then might also result in new vocations. These younger members should have the opportunity to have chapters, elect their leaders, etc.

#### Member from Another Country outside Europe

It is time to mention something else: bringing in a member from another part of the world, such as a province that was erected by another province, and which original province is now in need of leadership. Over the years religious institutes have discerned this and some have decided against it. The major reason is that differences in culture and language are such that it would take too long for non-Europeans to be able to feel at home and possess sufficient knowledge about the province in which they now are to be in leadership and take responsibility for the finances, medical and social insurances etc. Moreover, it is felt that those persons who would be quick enough to learn and adapt would most likely be needed desperately in their own countries. There they would run hospitals, schools, etc.

Religious have asked what it means also ethically when the provinces in Indonesia, Philippines, etc., are deprived of their strongest and brightest. After all, they will not remain in Europe for only a short time, but for life. Communities who did ask sisters from Asia to take on responsibilities here in

Europe begin now to wonder what will happen to these sisters when the European elderly are indeed dead and the Asians are approximately fifty years old. Can they then return home? What responsibilities lie here? That points to the next question: would it not be better to merge provinces here in Europe?

## **Merging Provinces**

In an attempt to handle the crisis of lack of available members, another step is often to merge provinces. A few remarks must be made with regard to the leadership team and the status of the juridic persons in canon and in civil law when this is considered

### **Leadership Team**

Several institutes have decided to merge provinces. In most cases the main reason lies with the number of people available to exercise leadership. Indeed merging three provinces into one often implies six to ten people less are needed in leadership. In case the new provinces are much larger, more travel will be involved. Above all, familiarity with the pertinent languages, an ability to recognize and act in different cultures, and a knowledge of different financial, fiscal, social, and civil laws will be required.

As I wrote this text I wondered whether there has ever been a meeting of provincial leaders of supra national provinces of different religious institutes to share their experience. We might think that countries like the Netherlands, Germany and Austria are not that different, but in fact they are. This should not be underestimated, and if such a move is made it should be carefully prepared.

The canonical literature often focuses on provinces with the same language and civil

law, but in Europe it is not that easy. Much is indeed required from a transnational leadership team. Often times the first team is composed of representatives of the different provinces. All should be aware that this might last for many years to come, but might also end sooner than expected. It would not be good when, for example, the Dutch province can already foresee now that in six years time none of them will be able to be elected. People might then feel betrayed in particular when the headquarters are also in one of the other countries.

Please allow me to make a reference to the handling of the abuse cases in provinces that merged. Some provincial superiors were confronted with their (in-)ability to read the personnel files (due to language differences), have knowledge of which civil lawyers who can advise, know the different policies that Episcopal conferences have issued for handling the abuse as well as norms that relate to prevention. Indeed leadership teams including the superiors have often felt overwhelmed, resulting at times in taking no action at all or in just responding by letter to civil lawyers of victims without consulting a civil lawyer from that country, believing it would be all more or less the same.

The abuse cases also revealed something else when it came to agreements entered into by episcopal conferences and conferences of major superiors to pay *ex caritate* money to the victims. Not only the procedures involved differ, but also the sums agreed on. Questions arose concerning the legitimate successor of the former province in civil law. Here the issue of bankruptcy of a province in one country and protecting the temporal goods in another country needs attention. Of even greater complexity is the question of liability of the provincial superior as such when the province has

merged with another province. Indeed this leads to the topic of merging different juridic persons.

### **Merging Juridic Persons**

The question of merging different provinces bears two aspects: the canonical and the civil. Of course the civil entities that will merge as an institute will need a juridic person in civil law in each country where it is. More difficult becomes the issue when the civil law stipulates that the canonical juridic person is in fact the juridic person through which the juridic person acts in civil law.

As we already saw above civil law in some countries stipulates that a canonical entity with juridic personality in canon law remains within the country, as the canonical entity can be the only way for the institute to participate in civil law. Sometimes this can be solved by using the canonical house as acting juridic person in civil law. I feel very reluctant to say much more here in general and advise rather simply that merging of supra national entities requires that attention be paid to civil law prior to the merging to discover which the options there are. I strongly advise that there is a meeting on this subject in which the leadership of the institutes (including the finance officer), civil lawyers of the countries concerned and canon lawyers participate. Only when it is clear what is to be merged and what the implications are for the different parts a decision can be made. This should NEVER occur after an institute has already executed the decision to suppress provinces and erect a new one or to merge two into one. Subsequent attention to the canonical issues suffices here in the wake of the civil arrangements.

I was once involved in such a “post merging” situation where it thankfully had taken place in January so that we had a whole year to repair the damages, but I would strongly recommend to do the consultation prior to the juridic action.

### **Conclusion**

I am aware that I have not addressed all your questions and concerns, and yet this might be indicative of where the issues concerning aging communities stands. There is no simple solution and the situation differs from one place to another.

You have come here today because you felt the need to hear something about this topic. You are concerned about the future of your provinces in particular in Western Europe, North America, and Canada.

As I wrote this presentation I thought about stories I heard in Canada. The Dutch missionaries accompanied the Dutch immigrants. Upon arriving in Canada the immigrants often stayed for some time with other Dutch farmers before they started their own farm. The religious stayed first with religious of another institute who helped them to get their feet on the ground. At times the decisions made and solutions found must have raised some eyebrows in their mother countries. In The Netherlands, Belgium, Germany, Austria and Switzerland religious are meeting to discuss the options and possible solutions for new challenges they meet. Do not close your eyes to solutions they might present to you even if you are not familiar with them. On the other hand, encourage them to see the situation in all honesty.

The questionnaire presented here three years ago might help. Solutions should be found that can be implemented and that can last in

principle until the last members die. Should the Lord send new workers for His vineyard through the charism of your institute they might indeed be called to work in the vineyard itself and not exclusively to look after the former workers of the vineyard who are now retired.

I wish you courage, trust and hope.  
Courage to see the situation as it is;  
Trust that the Lord will walk with you also  
as you go this path  
Hope, so that you as members of general  
councils will be able to encourage others!

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